United States Court of Appeals

for the Second Circuit

APPENDIX

74-1370

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Before: HON. INZER B. WYATT, D.J., and a Jury
vs.	
CANDIDO MAYET and MARIE AGUILAR a/k/a MARIA,	73 CRIM. 702

New York, December 5,6,7,10,11, 1973
February 1, 1974

APPENDIX

STENOGRAPHER'S MINUTES

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

vs.

73 Cr. 702

CANDIDO MAYET and
MARIE AGUILAR a/k/a MARIA,

Defendants.

----------x

Before:

HON. INZER B. WYATT,

District Judge

New York, New York
December 5, 1973 - 9:45 a.m.

APPEARANCES:

DON D. BUCHWALD, ESQ.
MICHAEL B. MUKASEY, ESQ.
Assistant United States Attorneys
for the Government

JOSEPH I. STONE, ESQ.
Attorney for Defendant Mayet

PETER WILLIS, ESQ.
Attorney for Defendant Aguilar

(In open court)

THE COURT: Good morning.

THE CLERK: United States of America vs. Candido Mayet and Marie Aguilar, also known as Maria. Are you ready?

MR. BUCHWALD: Ready for the Government, your Honor.

MR. STONE: Ready for Defendant Mayet, your Honor.

MR. WILLIS: Ready for Defendant Aguilar, your Honor.

THE COURT: All right. Ladies and gentlemen and members of the jury panel, my remarks are addressed to you in the first instance.

MR. BUCHWALD: Your Honor, if I might interrupt for one second. May we have permission to approach the bench very briefly?

THE COURT: All right.

(At the bench)

MR. BUCHWALD: Your Honor, we have served and filed a second offender information in this matter relating to the defendant Aguilar. I would like to ascertain on the record at this point whether counsel for Miss Aguilar has received a copy of the information.

MR. WILLIS: Your Honor, I have received a copy of the information sheet concerning a conviction before Judge Fisher, I believe. My firm represented Miss Aguilar, that's correct.

THE COURT: It doesn't become relevant until after we get a jury verdict here, so there is not much point in fooling with it right now.

(End of bench conference)

THE COURT: I guess we can now get started.

(Whereupon a jury of 12 and 2 alternates was duly impaneled and sworn.)

(In open court, jury not present.)

MR. WILLIS: Before the jury comes back, may I be heard concerning a letter which I received from the United States Government concerning a witness in this case by the name of Susan Marcus. The letter, which I am searching for, your Honor, advises myself and Mr. Stone that the Government expects to call a Susan Marcus concerning an incident which the Government contends occurred in late June of 1973 involving the sale to Susan Marcus of a quantity of cocaine. It will be contended at trial by the Government that both of your clients, meaning Aguilar and Mayet, participated in the transaction, about which Susan Marcus will testify. Then it goes on

briefly, this testimony will be offered as tending to establish the conspiracy charge in Count One of the indictment. The testimony will further be offered as independently relevant to the substantive count charged in Count Two of the indictment, as a prior similar act.

Your Honor, in order to prepare a defense in this case it has become impossible on the basis of the scant material provided at a late date by the Government, not telling us a specific date when this alleged sale occurred, not telling us the quantity of cocaine that is involved, not telling us where this matter supposedly occurred between our clients, and it has presented me with a most difficult problem in assuming that the Government is going to call this girl to testify and not having any background at all, and being served with this letter at this late date.

MR. STONE: Your Honor, if I may add, the bill of particulars submitted in behalf of Mayet, dated August 8, 1973, submitted to you, at which time on September 18, 1973 you granted certain of those particulars. One of the particulars you granted was as to Item B, State when as to time, place and location they allegedly had the narcotic drugs.

The Government never complied with that formal

order. However, they claim that the indictment set forth the approximate time and place. Now we are compelled at this late date to defend another accusation where we do not know the approximate time or place.

THE COURT: We know it is late June.

MR. STONE: Correct. We don't know where.

THE COURT: Where was it, Mr. Buchwald?

MR. BUCHWALD: The actual sale I am advised took place at the Puma shoe store.

THE COURT: We do know something more.

MR. BUCHWALD: I would, if I might, your Honor, wish to point out for the record that on Friday morning I called both Mr. Stone and Mr. Willis, his partner, Mr. Baffa, read to them the letter which was being sent to the mail, realizing that it might not arrive until Saturday or Monday, and I don't know when in fact it arrived. At that time we did read the letter. There was no occasion between Friday morning, when the letter was read to counsel, and this morning that either counsel was in any way dissatisfied with the information supplied or that they sought additional information with respect to the matters set forth in the letter. With respect to the date, we cannot be more specific than the evidence as we know it.

MR. STONE: Your Honor, one misstatement, or misinterpretation of our conversation. I advised Mr. Buchwald that at trial I would plead surprise on the basis of this late information, and so advised him, and I make this application to this Court on this date.

THE COURT: We know it is late June. We know it is the Puma Shoe Store. Do you know how much the quantity of the cocaine was?

MR. BUCHWALD: It is my understanding, your Honor, that there was involved a quarter ounce of cocaine.

THE COURT: How much in money is that?

MR. BUCHWALD: It is my understanding that that involved $250.

MR. STONE: Which defendant was there, who was present? All these items would be essential in a bill of particulars, your Honor.

THE COURT: Were both defendants claimed to have taken part in the Marcus sale?

MR. BUCHWALD: Both defendants are claimed to have participated. We have advised of the presence of one of the two defendants.

THE COURT: Which one is that?

MR. BUCHWALD: Mr. Mayet.

THE COURT: All right. Let's go.

MR. WILLIS: One last question, your Honor.

MR. STONE: I would object to any Susan Marcus testimony being offered on the ground of surprise.

THE COURT: I will permit it.

MR. WILLIS: I join in the motion, your Honor. But for clarification, where is the Puma Shoe Store? Is it New York, New Jersey?

THE COURT: I believe it is in Manhattan.

MR. BUCHWALD: I believe it is New Jersey. It is Mr. Mayet's shoe store.

MR. STONE: It is outside the Southern District of New York, so I would certainly object.

THE COURT: I can't pass on that until I see what the other evidence is. Maybe there are some acts in the Southern District. This is a conspiracy count.

MR. STONE: They are also offering it as a similar act doctrine under the Second Count.

THE COURT: In that connection they wouldn't have to show it was in the Southern District of New York. Get the jury in.

MR. BUCHWALD: I have discussed with counsel my intention during the opening to use a chart which simply has various names which will be presented during the trial

so that I might point to the names as I mention them is the opening. I will of course indicate that the chart is in no way evidence.

THE COURT: What are the names?

MR. BUCHWALD: The names of the four defendants, Aguilar, Mayet, Shapiro and Kelly, and the other names of those of Michael Lorber, Bruce Roth and Susan Marcus.

THE COURT: Are they claimed to be co-conspirators?

MR. BUCHWALD: No, they are not. They are claimed to be people with whom the defendants or varying combinations of the defendants transacted cocaine transactions.

THE COURT: One of the three is the subject of the Second Count?

MR. BUCHWALD: The three on the top -- well, I believe that Mr. Roth and Mr. Lorber both have information relevant to the Second Count.

THE COURT: All right. Let's get the jury.

MR. WILLIS: Your Honor, just one moment.

Would it be imposing on the Court if I asked if it is possible to have -- I am suffering from a very bad cold, a little water on my table, Judge?

THE COURT: Of course.

After we get started, Mr. Willis, you will get your water.

(In open court, jury present.)

THE COURT: Members of the jury, before we go any further in the trial, let me make a few explanations. We try to begin in the morning promptly at 9:30. We will sit today until a quarter to one, and then we will have to have a longer than usual lunch hour because I have other things to which I must give my attention. We will stop at a quarter of one and resume at 2:30. I am not quite sure how long we will be able to sit this afternoon, but we will stop before five o!clock.

Now, members of the jury, every jury has a foreman and under our practice it is that juror, lady or gentleman, who happens to occupy seat number one, which is in the first row nearest the bench. That means that Mrs. Segal will be your foreman. I usually call the lady foreman Madam Foreman. It may sound funny, but it seems better than Foreperson. Counsel or anybody else can refer to it as Madam Forelady. As a matter of practice I call her Madam Foreman.

I must emphasize that while the trial is going on, the jurors should not discuss the case among themselves or with anybody else. I am sure you can all

appreciate readily why you shouldn't discuss the case with somebody who isn't a member of the jury because, of course, it is the verdict of this jury which must be obtained, and not the verdict of somebody else. But you might not so readily understand why I emphasize that you should not discuss the case among yourselves.

The reason is this: The jurors should keep an open mind until all the evidence has been heard and you yave received my instructions as to the applicable law. And it is believed that if jurors discuss the case among themselves as the trial is going on, it interferes with keeping that open mind until all the evidence is in which I emphasized.

Another point of procedure: You may occasionally see me conferring with counsel out of the hearing of the jurors, what we call at the side bar. The reason is not that there are any secrets from the jury, but the reason is that the jury decides all issues of fact, and we are discussing questions of law, and it is believed that if we argue about questions of law in the hearing of the jury it distracts and diverts the attention of the jury from the issues of fact, which are for the jury to decide, and gets the jury interested in and concerned with questions of law. That is the reason that it is done.

We usually try to discuss questions of law out of the hearing of the jury.

Now, as I told you, the charges in this case are contained in an indictment which is an accusation, and I want to take time now to read the indictment to the jury, so that you will know what the charges are that we are here to try. You don't have to remember details of the indictment and, indeed, at the end of the trial when the jury is deliberating I will give the foreman a copy of the indictment for your convenient use during the deliberations. I want to read it now so you will understand what it is the charges are.

The grand jury charges, one, from on or about the first day of May 1973 and continuously thereafter, up to and including the date of the filing of this indictment in the Southern District of New York, Candido Mayet, Harry Shapiro, Robert Kelly and Marie Aguilar, the defendants, and others to the grand jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841 A and other sections the numbers of which you need not recollect, of Title 21, United States Code.

This indictment, for your information, was

filed -- that is, returned -- on July 19 of this year. As you heard me explain earlier, Harry Shapiro and Robert Kelly, two of the four defendants, are not here on trial for reasons with which the jury has no concern. Mr. Candido Mayet and Miss Marie Aguilar are here on trial. Two, it was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule 2 narcotic drug controlled substances, the exact amount thereof being to the grand jury unknown, in violation of Sections -- and then follow certain sections of Title 21, United States Code.

Then overt acts.

I should say that a conspiracy which is an agreement, in essence, to violate the law, a conspiracy is not unlawful unless some act is done to carry out the conspiracy. There must be at least one act done to promote, to carry out, the conspiracy. And that one act or more than one act to carry out a conspiracy is called or are called overt acts. An overt act then is the technical term for an act done to carry out a conspiracy.

Overt acts: In pursuance of the said conspiracy and to effect the objects thereof, the following overt

acts were completed in the Southern District of New York:

1. On or about July 8, 1973, the defendant Harry Shapiro had a conversation with another about the sale of cocaine.

2. On or about July 9, 1973 the defendants Candido Mayet, Harry Shapiro and Marie Aguilar met with another at 1411 Broadway, New York, New York.

2. On or about July 9, 1973, defendant Harry Shapiro delivered cocaine to another. The second count -- and if there is more than one offense charged in an indictment each separate offense must be charged in a separate section or subdivision of the indictment called the count. Since there are two separate charges here, there are two separate counts. This is the second count, the grand jury further charges on or about the ninth day of July, 1973 in the Southern Dis-rict of New York, Candido Mayet, Harry Shapiro and Marie Aguilar, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a chedule 2 narcotic drug controlled substance, to wit, approximately 80 and 63 hundred grams of cocaine hydrochloride.

The defendants have denied the charges in the indictment, by pleading not guilty. The indictment, as I told you, is not evidence of the offenses. It is merely an accusation, and the plea of not guilty raises

the issues to be tried here.

I also explained that the Government has the burden of proof to satisfy you of the guilt of the defendants beyond a reasonable doubt, and because the Government has the burden of proof it affects, influences, the order in which presentations are made. Because the Government has the burden of proof, the Government is permitted to make the first opening statement to the jury. Because the Government has the burden of proof the Government is permitted to make the last closing statement to the jury.

Mr. Buchwald, will you address the jury.

MR. BUCHWALD: Let me introduce myself again briefly. I am Don Buchwald. I am an Assistant United States Attorney, and I will be presenting the Government's case this morning. Mr. Michael Mukasey is also an Assistant United States Attorney and he will be assisting me in the presentation of the Government's case, and Mr. Gregory Blass seated at the end is a law student who is working part time in the Ueited States Attorney's office and will also be sitting at counsel's table.

Ladies and gentlemen, my function now is to put the Government's case, the Government's evidence, in

perspective so that you have a better opportunity to evaluate the individual pieces of evidence as they come in before you. Evidence doesn't come in on a narrative, this happened on day one, this happened on day two, rather, the witnesses testify and you hear most of what they have to say, or all of what they have to say, and that may span a great time span. For you to be able to understand the relevance of the evidence and the importance of the evidence this opening is given so that you have the total picture, and you can piece it together.

This case, which is a narcotics case, as you heard, in which it is alleged in the indictment that various defendants, including the two defendants on trial, conspired to distribute narcotics, and where it is alleged in Count Two that they in fact distributed and possessed with intent to distribute some 80 grams of cocaine. This case is a relatively simple case, relatively uncomplicated. The only thing that may tend to seem confusing or tend to seem complicated is the wealth of names involved. Many people, many names. What I would like to do at this point, if I might -- can everyone see the chart that I have placed here?

If I might, in reviewing the evidence, the Government evidence will establish, with respect to the

conspiracy count, that at least four people participated in that conspiracy. Bobby Kelly, Harry Shapiro, Candido Mayet and Marie Aguilar. Candido Mayet and Marie Aguilar are the two defendants on trial.

The mode of operation, the evidence will establish, is that Marie Aguilar would have possession of the cocaine. That she would produce it for Candido Mayet when sales were supposed to take place. That Candido Mayet, who owned a shoe store or had a shoe store and a shoe factory of some kind in New Jersey, in addition to running the operations of the shoe store, would also recruit individuals to set up deals for the purchasing of cocaine. The evidence will establish that Candido Mayet recruited one of his shoe salesmen, Harry Shapiro, to get Mr. Shapiro to set up purchases of cocaine. The evidence will establish that Harry Shapiro in turn recruited his roommate, Bobby Kelly, to also set up purchases of cocaine.

The evidence will further establish, ladies and gentlemen, that Bobby Kelly set up cocaine purchases through an acquaintance of his by the name of Michael Lorber. Mike, as known to Bobby Kelly, worked in a show room here in Manhattan. And the evidence will establish by conversations between Bobby Kelly and the

gentleman he knew as Mike, an agreement was reached whereby Mike and Mike's people would purchase cocaine, Bobby Kelly and the sources he had would sell cocaine. The evidence will establish that through the contact, Kelly and Mike Lorber, that eventually Harry Shapiro met Mike Lorber, that Harry Shapiro was introduced by Mike Lorber to one Susan Marcus, and that Harry Shapiro and Susan Marcus went to New Jersey and that cocaine was sold to Susan Marcus by the defendant Candido Mayet. The evidence will establish that at various times a price list was sent down the line to Bobby Kelly, who gave it to Mike Lorber to inform Mike how much an ounce cost, how much half an ounce cost. The evidence will establish that a sample of cocaine was delivered to Michael Lorber, to establish what fine quality cocaine this was. And the evidence will finally establish with respect to the second count charged in the indictment the sale on July 9. That Harry Shapiro, Candido Mayet, known as Candy Mayet, Marie Aguilar, they went in to New York, they met Bruce Roth. That when they came in to New York the cocaine was with them, cocaine which had been furnished by Marie Afuilar, which was in fact in Marie Aguilar's pocketbook, that after they met Bruce Roth they separated, Marie Aguilar going one way and the other three gentlemen

going to the place where the sale was finally to take place, the Market Diner in New York, and that when they got to the Market Diner Candido Mayet stood at a distance while Harry Shapiro was supposed to make the sale to Bruce Roth's friend. He had another individual who turned out to be an agent, an undercover agent of the Drug Enforcement Administration. That essentially is the evidence. As I indicated, I believe it is a relatively straightforward and simple case. I ask you to keep the names, the various names, in your mind as best you can.

Ladies and gentlemen, I am sure you understand that this is an important case both to the Government and to the defendants on trial here. I am sure that you will give it your careful attention, that you will reserve your own decision and the making up of your own minds until all the evidence is in. Please do give it your careful attention. I am sure you will, and I thank you in advance for doing so, and I thank you for your attention now.

THE COURT: Do you want to take away the easel, Mr. Buchwald, please.

Mr. Stone.

MR. STONE: We have agreed on a different order.

THE COURT: Certainly.

MR. WILLIS: Judge Wyatt, Mr. United States Attorney, Mr. Stone, Madam Forelady, ladies and gentlemen of the jury:

This is a criminal trial about to proceed in this courtroom. There are very serious charges. My client, Miss Marie Aguilar, has been charged with a serious crime. You heard Judge Wyatt refer to a piece of paper called an indictment. Let me explain to you briefly that this piece of paper is not evidence. It is merely the way the Government procedurally brings someone who is accused of a crime to a courtroom. I am glad that the United States Attorney provided all of us with his chart of names this morning, for it enlightened me and I am sure it enlightened Miss Aguilar concerning these charges, because she doesn't know anything about them, and she is here today because she denies her guilt. One doesn't have a crystal ball when trying a case, and can't project into the future. But I think on the basis of the little information that I have, that has been provided to me, that you are going to find that the Government's case against Marie Aguilar is so thin, so shabby, that when you sift through all the evidence during this trial you are going to ask yourselves "Why is she here?", "Why was she brought here?". There is a fable -- if any of

you are readers of Aesop's Fables -- there is a fable called "The Monster and the Moon," if any of you read it, and briefly I think it goes to your position as jurors in a criminal case. You may remember that a great scientist was looking through a telescope at the moon and all of a sudden lo and behold he say this tremendous creature on the face of the moon, and as he struggled with the telescope to look closer and closer and closer the monster began to grow and grow and grow. And he told all his friends "Look what I discovered, look at the facts that I have," and he made a conclusion based upon the facts presented to him. And the conclusion was that indeed there was a tremendous monster on the face of the moon. One curious fellow not wanting to believe all the facts given to him by the scientist said "I am going to look at that telescope so carefully, I am going to take it apart. I am going to examine it and then I will know whether there is a monster on the moon." And you know what happened, he took the face of the telescope off and lo and behold, there was a little bug fluttering around inside the face of the telescope, and when he removed the bug and threw it away, and put the telescope back together again and he looked at the moon there was no monster on the moon. That is what I think

each and every one of you must do. You have got to examine and not take at face value what the United States Government says to you in this case. That is your job as jurors. Because they have indicted Marie Aguilar on certain charges, that doesn't mean those charges are true. That doesn't mean they can be substantiated by facts, and by evidence. That doesn't mean that she is guilty. Remember the Judge said to you that Marie Aguilar stands here presumed innocent of the crimes that are charged. That presumption of innocence goes with it through the entire trial. That presumption of innocence remains with her until you change it. After all the evidence is in, if you find that the Government has proved its case beyond a reasonable doubt. Some of you indicated to his Honor this morning that you sat on civil cases. That is a little different. This is criminal. His Honor will tell you -- because his Honor controls the law in the case. You listen to the facts and his Honor will explain to you what beyond a reasonable doubt means. The burden, the responsibility of presenting the evidence in this trial, rests wolely with the Government. They brought the charges. I think that you will find as the trial goes on that the reason Marie Aguilar is sitting in this courtroom is because the witnesses, whose names

were presented by the Government this morning, are desperate people. I think you are going to find that out. You are going to find out that certain people who were included on the indictment, whose names were there, aren't standing trial in this courtroom today. They are giving testimony on behalf of the Government. You are going to have to really scrutinize that testimony to find out whether it is credible, whether it is believable, or whether there is a reason why these people are coming forward now, after having been indicted, coming forward now to help the Government. Remember one thing, in closing, the Government, the United States Government, is nothing more than all the people that make it the United States Government. Marie Aguilar is one of those people that is a composite of what we call the United States Government. She is entitled and will be given, I am sure by Judge Wyatt in this courtroom, all of her Constitutional guaranties during the course of this trial. I said to you at the beginning that I don't have a crystal ball. I can't project what you are going to do or what the outcome is going to be. But I am very confident on the basis of what I bnew about the case before I came here this morning, and on the basis of what I heard the United States Attorney tell you only moments ago, that

you are going to find Marie Aguilar not guilty.

Thank you for your time.

THE COURT: Mr. Stone.

MR. STONE: Judge Wyatt, Mr. Buchwald, Mr. Willis, Mrs. Segal, ladies and gentlemen of the jury, my name is Joe Stone. I am the attorney for Mr. Candido Mayet. In fact, it is my pleasure at this time to be the attorney for Mr. Mayet. It is my job to tell you what I think at this time the evidence will show in this case. It will be the evidence brought forth by the Government, by the cross examination of the Government's witnesses and by the witnesses offered by Mr. Mayet himself. The evidence will show a particular pattern of events, particularly that Mr. Mayet is 25 years of a age, has never been convicted of a crime, is a Cuban refugee who runs a shoe store and a shoe factory both in New Jersey and New York. The evidence will show that Harry Shapiro was an employee of Mr. Mayet and Mr. Mayet's father, and he worked at the shoe store in New Jersey, and the evidence will show that Mr. Mayet and Mr. Mayet's father were not satisfied with Mr. Shapiro's work. And they continually urged him to do a better job selling shoes. And shoe selling is Mr. Mayet's sole occupation. The evidence will show that on July 9 of

1973 Mr. Mayet, Mr. Shapiro and I believe Miss Aguilar went to New York for the purpose of buying shoes and going to showrooms. At that time Mr. Shapiro, without the knowledge of Mr. Mayet, had the sole intention of selling narcotics while he was also in New York. He went to the Market Diner. He told Mr. Mayet "Leave me alone for a while," and at that time a sale of narcotics took place. Mr. Mayet was seen by the other agents and Mr. Mayet went back to his shoe store that day after completing his business. The first thing that happened to Harry Shapiro, and the evidence will show this, that he was interviewed and interrogated by the United States agents and United States Attorney. And immediately after his arrest he was told that he would be shown leniency and he would be shown consideration if he would tell the United States Government who else was involved, who was the fellow that he saw him with. And that suggestion came to Shapiro's mind immediately, the boss I don't like has now given me an opportunity to get even with him. So he said Candy Mayet was the man. He was the fellow you saw over there. This statement was given by Shapiro to federal agents immediately after Shapiro's arrest, or shortly thereafter. So the next day, being agents of the United States Government, they went to Mayet's shoe

store and they confronted him with certain accusations. One of those accusations was "Were you with Shapiro in New York yesterday?" Mayet was nervous. He reflected all his past training, having come from a police state, and he said "No, I wasn't with Shapiro." The Government agents concluded that "We now have a false statement. We have the statement of Shapiro. Therefore, Mayet must be involved," and they arrested him. They charged him with this crime. But they didn't stop there. They continued the surveillance of Mr. Mayet because they felt, as narcotics agents, that if they watched him they would see him get involved with a narcotics traffic. But they were frustrated and they didn't see that. All they saw was this man work in his shoe store, and so they went one step further. They had to get some other evidence against Mayet. So they asked Shapiro who else we can get, what other offer could we give to a human being to keep them out of jail, to put him in jail. That is what the Government did in this case. They dangled carrots in front of stool pigeons so they could put the name on the coffin of Mr. Mayet, because they were frustrated knowing this man was a working man that had never been involved in anything before, and the investigation would stop unless they got those additional

witnesses. So they made these great offers to Harry Shapiro and to Susan Marcus to come forth and walk away from a criminal charge if they would testify against Mayet.

You will have the opportunity of assessing the most important thing in a trial today, the credibility of a witness, the motive of a witness, the purpose that a witness is giving testimony, and the consideration offered by our Government to get this testimony against another citizen. After you assess the credibility of all these witnesses and assess the background of Mr. Mayet, you will find that the United States Attorney in his opening statement has promised to pay you at the conclusion of this case a certain amount of evidence. It is equivalent to going to a bank and writing out a check and that check should read "I, Donald Buchwald, hereby promise to pay to twelve jurors a substantial amount of clear, unequivocal, substantial evidence against Candido Mayet." When he tries to come to you with that check at the conclusion of the case you have to look at that check carefully to see whether or not it will bounce, whether or not it has any holes in it or whether that clear unequivocal evidence lacks substance. We are not here to convict on charts. We are here to

convict or acquit on evidence or lack of evidence.

The fate of a human being will be in your hands, so listen attentively to all of this case. At the conclusion you can be assured that the Government's check will bounce sky high, and you should acquit Candido Mayet.

THE COURT: The Government will call its first witness.

MR. BUCHWALD: The Government calls Angel Luis Castillo.

THE COURT: While witnesses are sworn I like to ask everybody in the courtroom to be seated, silent and at attention, please.

A N G E L L U I S C A S T I L L O, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

MR. BUCHWALD: May I proceed, your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Castillo, where do you reside?

A 615 Palisades Avenue, Cliffside Park, New Jersey.

Q Will you try to speak up and keep your voice up so all the ladies and gentlemen of the jury can hear you.

A Yes.

Q Is that an apartment building?

A Yes, it is.

Q How many apartments are in the building, if you know?

A Nineteen.

Q Do you know who the superintendent of the building is?

A I am.

Q You are the superintendent?

A Yes.

Q Are you generally familiar with the tenants who

have lived in that building while you have been the superintendent?

A Right.

Q Mr. Castillo, would you look around the courtroom and tell us if you can fecognize anyone in the courtroom who has been a tenant in your building?

A Yes.

Q Would you point to that person?

A Marie.

MR. BUCHWALD: Would the record reflect that the witness has pointed to the only woman at defense table.

Q Do you know the name of that individual?

A Maria Valenciana Aguilar.

Q Maria Valenciana Aguilar, is that correct?

A Yes.

Q Do you know what apartment she lived in?

A 18.

Q Do you know when she lived there?

A By September.

Q Does she still live there.

A She moved out by September.

Q September of when?

A By the end of.

Q September of this year?

A Yes.

Q Was she living there in July of this year?

A Yes.

Q How long had she lived there, Mr. Castillo, when she moved out?

A About seven months.

THE COURT: All right.

MR. BUCHWALD: No further questions.

THE COURT: Mr. Stone?

MR. STONE: I have none.

THE COURT: Mr. Willis?

MR. WILLIS: One moment, your Honor, please.

MR. WILLIS: No questions of this witness.

THE COURT: What is the address of that apartment house?

THE WITNESS: 615 Palisades Avenue.

THE COURT: Where is that?

THE WITNESS: Cliffside Park.

THE COURT: Thank you, you may step down.

(Witness excused.)

MR. BUCHWALD: The Government calls Mr. Michael Lorber.

MR. BUCHWALD: Might I approach the bench?

THE COURT: All right.

(At the side bar.)

MR. BUCHWALD: Mr. Lorber was asked to be up here at 11:30. He might still be downstairs. If he has not been brought up, we might call down now.

THE COURT: All right. Have Mr. Mukasey call down.

(In open court.)

THE COURT: Can you take somebody else meanwhile?

MR. BUCHWALD: No, your Honor.

THE COURT: If we are going to have to wait, I think perhaps it might be more convenient to excuse the jury and you can wait in the jury room.

(The jury left the courtroom.)

THE COURT: What went wrong, Mr. Buchwald?

MR. BUCHWALD: I left instructions with the marshals downstairs to have Mr. Lorber here at 11:30.

THE COURT: And he didn't carry out your instructions?

MR. BUCHWALD: The marshals did not. I don't think Mr. Lorber is in a position to affect the outcome. I would trust that they will be here rapidly. I know Mr. Lorber was brought over this morning from West Street.

THE COURT: All right. Let's take a few minutes.

(Recess.)

THE COURT: We will need the defendants, Mr. Stone, and we will need Mr. Willis.

MR. STONE: I will get them, your Honor.

THE COURT: All right.

We can get the jury now, Mr. Clerk.

(In open court, jury present.)

THE COURT: All right.

MR. BUCHWALD: I call Michael Lorber.

M I C H A E L L O R B E R , called as a witness in behalf of the Government, being first duly sworn, testified as follows:

THE COURT: Mr. Lorber, this is a kind of big room, and we want the furthest jurors to hear, so would you try to keep your voice up.

THE WITNESS: Yes.

MR. BUCHWALD: May I proceed, your Honor?

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Lorber, I draw your attention to early June 1973. At that time were you employed?

A Yes, sir.

Q Where were you employed?

A 1411 Broadway.

Q In what capacity?

A Manufacturers representative.

Q Was there a store there or something?

A Showroom, junior sportswear showroom.

Q It had a name?

A Bonnie & Clyde.

Q What did you do there?

A It was my place.

Q You owned it?

A Yes, and I sold it.

Q Do you know a man by the name of Robert Kelly?

A Yes, sir, I do.

Q When did you first meet Mr. Kelly?

A The early part of June, 1973.

Q 1973?

A Right.

Q Where did this meeting take place?

A In my showroom.

Q At 1411 Broadway?

A Yes.

Q What floor id Bonnie & Clyde on?

A Seventeenth floor.

Q Did it take place in the showroom?

A Yes, Mr. Kelly came there for business.

Q Did you speak to Mr. Kelly on this occasion?

A Yes, we spoke about business.

Q Did you speak about anything else?

A Yes. We had a conversation about cocaine.

MR. STONE: I object, and request that the jury receive cautionary instructions as far as this conversation.

THE COURT: It is taken subject to connection, and if it is not connected you may move to strike it.

Q Mr. Lorber, will you state to the Court and jury what you said to Mr. Kelly and what Ma. Kelly said to you on this occasion?

A I can't remember exactly how it got started, but Kelly then told me that he had a good connection for cocaine if I ever wanted any. He said that he could get me brown cocaine and that he had a great connection, a Cuban connection, and that he was part Cuban himself, and said that he would come up and give me a taste within a week or so.

Q What did you say?

A I said fine.

Q You said fine?

A Yes.

THE COURT: Did he say he could get brown cocaine?

THE WITNESS: Brown. He made it a point of saying brown because there is white also.

THE COURT: Is brown supposed to be better than white?

THE WITNESS: That is what he told me.

THE COURT: You didn't know?

THE WITNESS: He made a point of telling me it was brown.

Q Did you have further discussions after this with Mr. Kelly?

A I didn't hear from Mr. Kelly for a week or two and then I ran into him in the lobby.

Q Where?

A 1411 Broadway, my building. He said it was coming through any day, and he would be up to see me.

Q What was it that was coming through?

A The cocaine.

Q Did you ever discuss with him how much cocaine he had?

A Not at this time. He said when he got it he could get as much as I needed.

Q Did you discuss how much the cocaine would cost?

A He said he couldn't give me a price at that time, but when he brought me the sample later on he would give me a price.

Q Was there a time that Robert Kelly actually brought you cocaine?

A Yes. I am not sure, about the second or third week in June he came up to the showroom with a little cellophane about this much wrapped up in aluminum foil.

Q You say this much. How much?

A Just a little bit. He called it a spoon.

Q What did he call it?

A A spoon. He brought it up and he said "Here is the sample I promised you." He said"It cost me $20, you have to give me $20 for it and it is really good," and he wanted me to try it there.

Q Did Mr. Kelly tell you at that time where he got this small amount of cocaine from?

A No, sir. He just said his man.

Q His man?

A Yes.

Q What if anything did you do when he came with this small amount of cocaine?

A I told him I would give it to my friend, my people to taste, and I would get back to him. I asked him for the price, and he told me that he would have to let me know about that, and how much he could get.

Q At this time when he brought this small amount of cocaine did you have any discussions with him about the amount of cocaine you wanted?

A I asked him how much he could get, and he said he could get quantities if he wanted to, kilos.

Q What is kilos?

A 2.2 pounds is a kilo.

Q That is one kilo?

A Right.

THE COURT: Mr. Lorber, did you tell Kelly that you were going to use this cocaine yourself?

THE WITNESS: I told him that I was going to give it as a sample to my people. He wanted me to try it there. I told him I had to work and I couldn't do it. He then wanted to show me how good it was, so he took a little dab in his hand and the girl who was working for me, he put it on her gum over here, and he said wait a few minutes and he took his finger and hit her in the gum and she didn't feel anything.

Q He did this with the small amount of cocaine?

A Just like dabbed his little finger in and went like that, and hit it. She didn't feel anything.

Q When you spoke to him about a kilo of cocaine or other cocaine, did you say that you were going to use this other cocaine?

A No, I said I had somebody that was interested. You mean the kilo?

Q Any cocaine.

A I said I had people that were interested.

Q You told that to Kelly?

A Right.

Q Did there come a time, Mr. Lorber -- well, what name did you call Mr. Kelly?

A Bobby.

Q Did there come a time when you spoke to Bobby Kelly and got information from Bobby Kelly concerning the prices for cocaine?

A About a few days later I was coming out of work about five o'clock, and he ran into me in front of my building, and he said he was just coming up to see me.

Q This is the front of 1411 Broadway?

A Right, the Broadway side. I was walking out and he said he was on his way up to see me, and he had a price list for me at which time he handed me the back

of a matchbook with a list broken down.

Q He handed you a price list?

A Right.

MR. BUCHWALD: Can we have this item marked as Government Exhibit 2 for identification.

(Government Exhibit 2 was marked for identification.)

Q Mr. Lorber, I show you what has previously been marked as Government Exhibit 2 for identification, and ask you if you can identify that item?

A Yes, I am sure because my handwriting is in the back. It is a telephone number I wrote down that night.

Q Can you identify the front of the item?

A Yes.

Q What is that?

A A price list broken down from a gram to an ounce.

Q Had you ever seen that price list before?

A That is the one he handed me that night.

Q That is the one Bobby Kelly handed to you?

A Right.

Q You referred on the back of Government Exhibit 2 for identification to another item.

A He gave me a number to reach him at in New Jersey.

Q Did you write down that number?

A That is my handwriting.

Q What did Mr. Kelly say about that number?

A He said that I could reach him there at any time at night, it was his girl's house.

MR. BUCHWALD: At this time the Government offers Government Exhibit 2 for identification in evidence as Government Exhibit 2.

MR. WILLIS: You are offering it into evidence?

MR. BUCHWALD: Yes.

MR. WILLIS: I object.

THE COURT: Yes, you and Mr. Stone should have a standing objection and do have a standing objection. This must be connected with the defendant's on trial. It hasn't been connected thus far, and I will take it subject to connection and to a motion to strike if it is not connected.

Mark it, Mr. Clerk.

(Government Exhibit 2 received in evidence.)

Q Mr. Lorber, at that time when Mr. Kelly gave you the price list, did he tell you where he had received

the price list from?

A No, he just said his man.

Q Did there ever come a time in June 1973 that you spoke to Mr. Kelly about who your people were who were interested in the cocaine?

A No. What I did was I spoke to Kelly and made an appointment for him to meet Bruce Roth.

Q Would you repeat the name?

A Bruce Roth in my showroom at approximately one o'clock, around one o'clock, June 25, on a Monday.

Q Is Bruce Roth someone you knew?

A Yes, sir.

Q Did you give Mr. Kelly the full name of Bruce Roth?

A No, I just said Bruce.

Q What if anything happened on June 25?

A Kelly never showed up. Bruce did, but Kelly just never showed up.

Q At your showroom?

A Right.

Q After Kelly failed to show up what if anything did you do?

A That night I called the number on the back of the card.

Q This is on the back of Government Exhibit 2?

A Right, the number he had given me, and when I called up I asked for Bobby, but he wasn't in, another guy answered and I said "I am Bobby's friend, Mike, from the garment center," and he said --

Q Please speak up.

A -- I said "What happened to Bobby?" and he says -- I asked him what happened to Bobby -- he said yes, Bobby had told him about me and I should forget about dealing with Bobby because he was a jerk, and that he was the man that I wanted to deal with.

Q And did this person give you a name?

A He said he was Harry.

Q The person you spoke with on the phone was Harry?

A Right.

Q This was on the same day that Bobby was supposed to come down to the showroom but had not?

A Right. That was on a Monday because Bruce's day off was on a Monday.

Q At that time did you discuss with this person you knew as Harry cocaine?

A He asked me how much I wanted to buy, and he said, "You know the prices, you have the list," and I

said yes. I said --

Q He said that? What did he say?

A He said "You know how much -- Bobby gave you the list," and I said "Yes," and he said "You know how much it is," and I said "Yes, it is $900 an ounce." He said, "How much do you want to buy?" and I said "How many can you do?" and he said "Right now I can do two ounces and more later." He was ready to come in to New York that night to do it.

MR. STONE: Objection.

THE COURT: Is that what he said?

THE WITNESS: He said if you want to do it tonight, I can.

THE COURT: He said that Harry told him if he wanted to do it tonight he can come to New York?

THE WITNESS: Right. I told him I wasn't ready and I couldn't possibly get in touch with my people, and he said "I will call you tomorrow" and he called me at work, and I couldn't do it then or almost the whole week. He had called me like two or three times a day.

Q This is Harry calling you?

A Right. I hadn't spoken to Bobby after that for a while.

Q Did there come a time when Harry came to your showroom?

A Yes, he called me up and said he is coming in Friday afternoon, which was the Friday after that Monday that I called him up, and that I better get it together or else just forget about it. I said I would try, and he said he is coming in regardless, he had to be in the city, and we better get something together if I want to do business.

Q Did Harry in fact come in to your showroom?

A He came.

THE COURT: Was he alone?

THE WITNESS: When he came he was alone.

Q Was anyone else in your showroom at the time that Harry arrived?

A Right, my partner and a girl that worked for me, and I couldn't get anybody for Harry, so I had been speaking to this girl earlier in the day, Susan -- I forget her last name.

Q You spoke with a girl by the name of Susan?

A Yes, and she told me -- she was a friend of one of my manufacturers, and she used to call him up to speak to him all the time, and she used to speak to him, Markowitz, I think.

Q What about Marcus?

A Yes, it has been a while. She told me she lost her cocaine connection and she loved to do cocaine, so since Harry was coming down and he told me he was coming to do business I called her up and I told her, and she asked me how much it was and I read the sheet that I had to her and she said fine, she would be there. She even got there before Harry got there.

Q She arrived at your showroom before Harry?

A Right.

Q Then Harry arrived?

A Right, I remember.

Q Then what happened?

THE COURT: Susan is not the girl who works for you?

THE WITNESS: This is a different girl.

THE COURT: There were two girls there, the girl who works for you and Susan, when Harry came in?

THE WITNESS: Right.

THE COURT: All right.

Q What happened when Harry arrived?

A It was very funny, because I said this is Harry, he introduced himself to me and I said "Harry, this is Susie,"and she said "You are Harry" --

Q Had you ever met Harry before?

A I never met either one of them in person until that day.

Q Had you spoken with Susan Marcus before?

A Yes, many times.

Q Was this on the telephone?

A Yes.

Q Then what happened when Harry arrived?

A She walked up to him and said "You are Harry, the guy who has the cocaine." And he said "Yes," and she said "I am the FBI," and he started to laugh. They thought it was funny. They talked between themselves.

Q You didn't hear what they said?

A I heard part of it. I had to leave in the middle.

Q Then what?

A He said he didn't have anything with him. I think she wanted to buy a quarter of an ounce, $250, and she had the money with her, but he didn't have anything with him, and he said he had to go back to New Jersey, and I remember them discussing how she would get back --

MR. WILLIS: I object. If he is giving us facts, fine. If he thinks this is what took place --

Q Were these things said in your presence?

A This is part of the conversation that I heard. I heard the beginning and I heard the end, because in the middle I was busy. At the end they were discussing how she would get home from New Jersey. She said she had no way to get home, and Harry said he couldn't take her back so they decided he would give her money for a cab.

Q Did they stay in the showroom?

A After that they left.

Q Did they leave together?

A Yes.

Q After this time did you ever have occasion to speak with Bobby Kelly again?

A Well, what happened was I spoke to Harry that night and he called me all sorts of names because I didn't do what I was supposed to do, and he told me that it was off. He didn't want to do business, that I was full of hot air, those weren't his exact words, but to that effect.

Q Did you know what he was referring to?

A Harry was referring to that I didn't come through with the amount he wanted to sell. He told me that I better forget about it.

Q Was he made at you because you didn't have money?

A Because the money wasn't there for the two cunces that we had discussed.

Q That someone wasn't there?

A Right. He said it was nice that he got him this girl who bought a quarter, but that was nothing, that wasn't what he was looking for. He proceeded to call me names and tell me how full of it I was.

Q What if anything did you do after that?

A Monday, I had spoken to Bruce over the weekend and then on M.nday we decided that Bruce would come down and I would call Kelly.

Q Did you speak with Bobby Kelly again?

A I called Bobby Kelly. I said that my friend Bruce was down here now, and he didn't show up the week before, and maybe he could get back and we can get it back togetner again, and Kelly said fine, that he would be right over, and he came over, Kelly and Bruce walked out into the outside and talked it over, and I didn't see either one of them that day.

Q On that occasion, are you saying that Kelly and Bruce did meet at your showroom?

A Yes. It should have been the Monday after. I think it is July 2, because Bruce is off on Mondays.

Q And you introduced them to each other?

A Right.

Q And they left your showroom?

A Right.

Q At some time after that, did you speak to Harry Shapiro again?

A He called me that Friday and he asked me for Bruce's telephone number. He said he wanted to call him up and make sure that everything was all set.

Q Did you give him Bruce's phone number?

A No. I said that I would call Bruce's and have Bruce call Harry, and Harry gave me another number he could be reached at. I called Bruce and told him and I believe Bruce called Harry.

Q You called Bruce?

A Right.

Q Did you give him --

A I gave him the phone number, and he said he would call Harry.

Q Mr. Lorber, I direct your attention now to Monday, July 9, 1973, and I ask you at any time on that day did any of the individuals you have referred to in your testimony come to your showroom?

A Bruce Roth and Harry Shapiro.

Q Who got there first?

A Bruce was there and Harry was very late, as a matter of fact.

Q Did Harry come after Bruce?

A Yes, I would say about an hour and a half -- say, two, two and a half hours after.

Q Do you recall the time approximately that Harry got there?

A I remember Bruce was there right on time, which was one, and Harry was supposed to be there between one and two, and Harry got there around three o'clock.

Q When Harry came what if anything did you do?

A I just introduced him to Bruce.

Q You introduced Harry to Bruce?

A Yes.

Q Did they stay in the showroom?

A They talked for a few minutes in the showroom and they walked out into the corridor and that was it.

Q Did they walk out together?

A Yes.

Q Mr. Lorber, have you yourself ever been convicted of a crime?

A Yes, sir.

Q What was that?

A Violation of narcotic laws.

Q Did that involve cocaine?

A No. sir.

Q What was the charge, if you recall?

A Barbiturates and amphetamines.

Q When were you convicted?

A I think it was August 1973.

Q Have you been sentenced?

A Yes, sir.

Q What was your sentence?

A Two years.

Q Are you presently serving that sentence?

A Yes, sir.

MR. BUCHWALD: No further questions.

MR. WILLIS: May I approach the bench?

(At the side bar.)

MR. WILLIS: Miss Aguilar informs me she has been sick and she feels nauseous and feels she wants to throw up.

THE COURT: She can be excused and I will excuse the jury.

(In open court.)

THE COURT: Members of the jury, I think we will stop here and take a luncheon recess and, as I indicated, I am afraid we are going to have to take a

long luncheon recess today. We will meet again at 2:30. Until then the jury is excused. You may retire.

(The jury left the courtroom.)

THE COURT: Mr. Willis, there is a nurse downstairs, you know, if your client wants to ask. Do you know where to see, Mr. Stone?

MR. STONE: Yes, I do, your Honor.

THE COURT: I know there is a nurse downstairs some place.

MR. STONE: Near the Magistrates Office.

THE COURT: She usually has home remedies and she usually tries to do the best she can. Maybe smelling salts, who knows.

I am sorry we will have to take a long luncheon recess, but we will meet at 2:30.

(Luncheon recess taken at this point.)

AFTERNOON SESSION

2:30 p.m.

THE COURT: Mr. Willis, what about your client?

MR. WILLIS: The medical facilities are closed on Wednesday. She is not feeling very well. She had a virus. We would like to proceed. If she is going to get sick hopefully she will let us know.

THE COURT: Also she can be excused at any time and go outside.

Should we have a little more air?

MR. WILLIS: Yes.

THE COURT: Let's raise the window in the back.

MR. WILLIS: Thank you for your concern, your Honor.

THE COURT: As I say, if the young lady wants to go outside she can at any time.

MR. BUCHWALD: If I might, your Honor, the Count Two of the indictment refers I believe to 80.63 grams of cocaine. Upon review of the chemist's report and entering into the stipulation which counsel have entered into, the chemist report refers to 86.03 grams, the 6 and the 0 were transposed in the indictment. With the consent of counsel we would ask the indictment be amended.

THE COURT: I will not amend the indictment. That is an impossibility. An indictment can not be amended.

MR. BUCHWALD: I understand that, your Honor. We would submit and I believe that counsel would consent that this has an immaterial bearing.

THE COURT: I will charge the jury on that if you request it. Get the jury in.

(In open court, jury present.)

M I C H A E L L O R B E R , resumed.

BY MR. BUCHWALD:

We have concluded our direct examination of the witness, your Honor.

THE COURT: Mr. Willis, go ahead.

CROSS EXAMINATION

BY MR. WILLIS:

Q You pronounce your name L-o-b-n-e-r?

A L o r b e r.

Q You said that you worked as a manufacturers representative?

A Representative.

Q What is a manufacturers representative?

A I represent various sportswear manufacturers. If they don't have their own showrooms I handle their

lines and sell them to major department stores and buying offices.

Q And your office was at 1411 Broadway?

A It still is.

Q You still are working there?

A Well, right now I am not. My partner is running the business. It is still mine.

Q Besides representing clothes at 1411 Broadway, you had other business ventures, did you not?

A I don't know what you are talking about.

Q In particular, were you in the business of selling cocaine?

A Never.

Q The cocaine which you discussed with Mr. Kelly, would you tell the jury the purpose of your discussions concerning cocaine with Mr. Kelly?

A Could you repeat the question.

Q Certainly.

You had a discussion, did you not, with one Mr. Kelly concerning purchasing cocaine?

A That is right.

Q The purchase of cocaine that you were discussing with Mr. Kelly, what did you intend to do with that cocaine?

A I thought it might help me.

Q You thought it what?

A It might help.

Q It might help. Help you in your general health?

A No.

Q Well, in what way would the cocaine help you?

A Well, I was --

Q Let me ask you --

THE COURT: Wait, there is a question pending.

THE WITNESS: I didn't ask Mr. Kelly. Mr. Kelly brought the subject up to me. I did not go looking for Mr. Kelly, to begin with. Mr. Kelly came to my showroom and told me that he could get this cocaine. That is the first thing. I did not ask for it. As far as your question goes I, as you know, was under indictment for selling it and I thought maybe this might help me out of it, but I wasn't promised anything.

Q When you had your conversations with Mr. Kelly you were under indictment at that time?

A I believe so, yes. I was arrested in June 1972.

Q You were arrested in June of 1972?

A Right.

Q By the State or the Federal Government?

A Federal.

Q Did you agree after your arrest and your indictment in 1972 to work for the Government as an informant?

A I didn't agree to anything.

Q Let's go specifically to the time you had the discussion with Mr. Kelly. Did you have an agreement at that time with the United States Government that you were going to be working with them?

A I wouldn't say I had an agreement with anybody.

Q Had you met with the Federal Bureau of Narcotics?

A Yes, sir.

Q Had you entered into an oral agreement or some discussion concerning your cooperation?

A We didn't agree on anything. They just stated that they couldn't give me anything if I helped them, they could only possibly help my case but they wouldn't guaranty me anything period. We didn't enter into an agreement.

Q They couldn't guaranty you, but it might help your case, correct?

A They said it wouldn't hurt. They didn't say it would help. It wouldn't hurt. Theycouldn't guaranty it would get me off, or that it would make my sentence any less.

any less.

Q 1411 Broadway is a large building, is it not?

A Yes, sir.

Q There are, would it be fair to say, hundreds of manufacturers representatives in that particular building?

A I wouldn't say hundreds. I would say maybe 50 to 100. Part of it is owned by big firms too.

Q Several hundred people employed in the building?

A Yes.

Q Do you know why Mr. Kelly happened to pick you out for a discussion of cocaine?

A Yes.

Q Why?

A First, the way I met Mr. Kelly was Mr. Kelly worked for a firm called Garcia Designs. I had spoken to the owner a few months ago about representing his line. I hadn't heard from the man for two, three months. I got a call the day before Mr. Kelly came up from the owner of the firm stating that he is interested in having me represent the firm, and he would be up to see me the next day. He did not show up, Mr. Kelly showed up. I did not ask Mr. Kelly anything. He volunteered everything. In fact, he bragged about it.

Q Just the conversation started off about cocaine?

A First the conversation started off about the business. He was expecting Mr. Garcia to meet him there. Mr. Garcia did not show up.

Q How did the conversation get into cocaine?

A I can't exactly remember how it got into it. He told me he just came back from Florida and he was all tanned. We started talking about many things. He said if I needed, and I believe this is the way -- I can't say verbatim, he said if I ever needed some good coke, just like that, he had a good connection, and it was brown.

Q What was the date that you had this first meeting with Kelly?

A I couldn't tell you exactly the date of the meeting.

Q Can you tell me the month?

A Sure, the beginning of June.

Q what year?

A This year.

Q 1973?

A Yes, sir.

Q After you had your initial discussion with Mr. Kelly, when was the first time that you reported this to

theUnited States Government?

A When Mr. Kelly brought me the sample.

Q When was that?

A In the latter part -- around the 20th somewhere.

Q 20th of what?

A June.

Q You waited after the initial meeting?

A Yes, sir.

Q You didn't contact the Government?

A A lot of people talk and don't do. I wanted to see if he really could do it. It is easy to say "I can get this" and "I can get that." I didn't say anything until I saw it.

Q Is that from your past experience in the drug field?

A Yes.

Q When were you sentenced?

A I believe it was August 18.

Q Of this year?

A That is right.

Q After the defendants in this indictment had been indicted?

A Yes.

Q Was that after you had testified before the

grand jury?

A I think so.

Q All right. Kelly comes back to you after the first meeting, correct?

A Yes.

Q And you discuss cocaine once again, is that correct?

A You mean when he came up to the showroom and brought the sample?

Q Yes.

A He discussed it.

Q Is that right?

A Right.

Q What date was that?

A I don't remember that either. It was, I would say, the third week -- it had to be before the 25th.

Q Why before the 25th?

A Because I remember the date that Bruce came up was a Monday, and it was the 25th. That is when Kelly didn't show up and I know it was before.

Q Did Mr. Kelly leave you a sample of the cocaine?

A Yes.

Q What did you do with that sample?

A That is when I made the phone call and I spoke

to the agents and the agents told me to throw it down the toilet, which I probably did.

Q The agents told you to take that cocaine and throw it down the toilet?

A That is right. They weren't interested in samples.

Q Did the agents express any concern to find out whether this matter that you were told to flush down the toilet was in fact cocaine.

A They were interested in the introduction. They didn't want to see a sample.

Q They told you that?

A That is right.

Q What was the name of the agent?

A Lightcap.

Q Was that your contact thereafter, Lightcap?

A Right.

Q Did they give you instructions as to what to do?

A Only as far as when I spoke to them, what to ask for.

Q You spoke to who?

A After I spoke to Harry Shapiro, the first time, they told me to ask him if he could get more, at which time he said he could, and he gave me a different price.

Q That is when Kelly dropped out of the picture?

A For the time being, yes.

Q Mr. Shapiro appears and you begin a discussion with him concerning the purchase or cocaine?

A Mr. Shapiro didn't appear. I spoke to him on the phone.

Q Did you ever have a face-to-face meeting with Mr. Shapiro?

A Yes, the following Friday when he came up to the showroom and met that girl.

Q You discussed cocaine with Kelly. You have discussed cocaine with Shapiro.

A Shapiro told me to forget about Kelly, that he was Kelly's man and that Kelly was out of the picture.

Q When you had your discussion with Mr. Kelly, didn't you inquire where he was getting the cocaine from?

A As Mr. Kelly put it, he had a Cuban connection and he told me he was part Cuban himself, which I found a little strange, since his name was Robert Kelly.

Q Did he refer to his man?

A Just by that expression.

Q That is the expression?

A Right. He didn't use any names.

Q No names?

A No.

Q May I assume, and correct me if I am wrong, that you do not know this girl seated at the table here?

A No.

Q That you have never met her, is that correct?

A Correct.

Q So you got tied into this particular case through your own efforts to help yourself?

THE COURT: No, I won't permit that. That is argumentative.

MR. WILLIS: All right.

Q You called the FBI, the Federal Bureau of Drugs rather, to inform them that you had information concerning drugs, is that right?

A Right.

Q No promises were made to you by any Federal agency?

A That is right.

Q But you were told, correct me if I am wrong, that it wouldn't hurt you?

A That is right.

Q You then took it upon yourself to continue meeting with Ma. Shapiro and Kelly, as the case may be?

A Correct.

Q You related the information that you received from Kelly and Shapiro to the Federal Bureau of Narcotics?

A Right.

Q When you went for your sentencing, do you remember what Judge it was before?

A Yes.

Q What is his name?

A Tenney.

Q Were you represented by an attorney?

A Yes, sir.

Q Did your attorney tell the Judge of your cooperation and assistance?

A He did.

Q Do you know the maximum sentence that you could have received?

A No.

Q What was the sentence that you did receive?

A Two years, two years suspended sentence, and two years special parole.

Q You are presently where? Where do you reside?

A Now?

Q Yes.

A West Street.

Q West Street is what?

THE COURT: Federal detention headquarters.

MR. WILLIS: Thank you, Judge.

Q How long have you been there?

A Two months.

Q Do you get out on the weekends?

A No.

Q Have you left there in two months?

A No.

Q So you correct me if I am wrong, you got two years jail, two years suspended sentence, two years probation?

A Special parole.

Q And you were charged specifically with what crime?

A Possession with intent to distribute barbiturates and amphetamines.

Q Have you discussed your testimony that you are giving today with the Federal Government prior to coming here?

A I spoke to the United States Attorney.

Q Did you make any notes concerning your testimony?

A This testimony, no.

Q Excuse me?

A This testimony, no.

Q Did you write anything down?

A No, sir.

Q Did you review your testimony with the Government?

A He showed me my grand jury testimony.

Q He showed you your grand jury testimony?

A Yes.

Q When was the last time you saw Harry Shapiro?

A When we went to the grand jury.

Q Excuse me?

A I think when we went to the grand jury.

Q Did you ever purchase cocaine from Harry Shapiro?

A Until the day that he walked into my showroom I had never seen Harry Shapiro or heard of Harry Shapiro before.

Q My question is: Did you ever purchase drugs from Harry Shapiro?

A I said no.

Q The answer is "No"?

A No.

Q You never met him until what date, the grand jury?

A No. The first time I met him?

Q Yes.

A Around the 24th or 22nd of June, around there, in the latter part of June when he came into my showroom.

Q Did you know anything about Harry Shapiro's background?

A No, as I told you, I never heard of or saw him before that.

Q You didn't know where he worked?

A I didn't know anything.

Q Did you relay the information concerning your conversations with Shapiro to the Federal Bureau of Narcotics?

A Yes, sir.

Q The same gentleman, Mr. Lightcap?

A Yes.

Q I assume at no time did you relay any information nor did you know anything about one Maria Aguilar?

A No, sir.

MR. WILLIS: Thank you, sir.

THE COURT: Mr. Stone.

CROSS EXAMINATION

BY MR. STONE:

Q Mr. Lorber, prior to today have you ever seen me?

A No, sir.

Q Did you enter a plea of guilty to the crime of selling amphetamines?

A Yes, sir.

Q You didn't go to trial, did you?

A No, sir.

Q Prior to the time that you entered this plea of guilty, did any Federal agent ask you who your connection was for the amphetamines?

A When I was first arrested they did.

Q He asked you that?

A Yes.

Q And you told him?

A No.

Q You refused to tell him?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q Were you asked to cooperate as soon as you were arrested in your amphetamine charge?

A Yes.

Q Did you cooperate?

A No.

Q And you were released on bail, is that correct?

A Yes.

Q Were you asked at any time, from the time you were released on bail until July 18, 1974 to testify about any sources of narcotics?

A No, sir.

Q You were never asked that?

A No.

Q What amount of amphetamines did you sell?

A 10,000.

Q Individual doses?

A Little pills, yes.

Q How much money did you receive?

A I didn't receive any money.

Q You were arrested immediately?

A Yes.

Q So you never made any money?

A No.

Q That was the only time you ever handled narcotics?

A Yes.

Q Did you use amphetamines at any time?

A I used to.

Q Did you tell the Government where you purchased them?

A I couldn't.

MR. BUCHWALD: Objection, your Honor.

THE COURT: I will sustain that objection.

Q How many times did the Government call you before a grand jury in this or any other case?

A This was the first and only time.

Q And did you know the names of the people you were testifying against?

A At the grand jury?

Q Yes.

A I believe the names were mentioned.

Q Neither person had you ever met before, is that correct?

A That is correct.

Q Did the Government advise you that your sentence could come up for review within four months?

A The Government didn't advise me but I know that.

Q You know that?

A Yes.

Q That would be four months from August 12, is that correct?

A 18th.

Q August 18?

A I believe so.

Q So that your sentence could be reviewed by the sentencing Judge up to and including December 18, 1973, is that correct?

A True.

Q Did the Government also advise you that they would talk to your parole officer concerning your cooperation in this case?

A I don't believe so.

Q Did you ask them to talk to your parole officer?

o A No.

Q When are expected to meet your parole officer?

A I don't know. I haven't met him yet.

Q And you have been in West Street for the two months?

A Right.

Q You were sentenced in one month and given 30 days in which to surrender?

A Right.

Q It was that 30 days before you surrendered that you testified in the grand jury, is that correct, or before you pleaded?

A I think I testified before I was sentenced.

Q How many times did Harry Shapiro call you from the first time you talked to him on the phone until you met him?

A Very, very many times. Two or three times a day.

Q Every day?

A Every day.

Q Did Harry Shapiro at any time ever tell you who his connection was?

A He just said he had a partner.

Q That is all?

A He never mentioned a name.

Q Did he ever give you a description of the person?

A No.

Q Did he ever tell you anything about the person's ethnic background?

A No.

Q Nothing whatsoever?

A No, sir.

Q Did Kelly ever tell you about his connection?

A Kelly mentioned a Cuban connection when I first spoke with him. He told me he was part Cuban,

which I found strange.

Q Did Kelly tell you that his connection was Cuban?

A He said he had a Cuban connection.

Q Did he use the words"Cuban connection"?

A Yes.

Q Kelly didn't say his connection was part Cuban, did he?

A He said he had a Cuban connection.

Q He never said part Cuban, right?

MR. BUCHWALD: Objection, asked and answered.

THE COURT: I will permit it. Can you answer it?

THE WITNESS: I did already. I said no.

Q Do you remember this question and this answer before the grand jury on page 2, July 18, 1973:

"Q Did he tell you he had a Cuban connection?

"A Correct.

"Q It was in that conversation he told you that he had a Cuban connection?

"A Right. He said he was part Cuban. He had, you know, a Cuban connection."

Do you remember that question?

A Yes.

Q That is when Kelly told you he was part Cuban?

A The first meeting.

Q He didn't say his connection was part Cuban, he said he was part Cuban?

A He said he had a Cuban connection and that he was part Cuban.

Q Not the connection was part Cuban?

A He said he had a Cuban connection, and that he was part Cuban.

Q Did you ask him anything about the Cuban connection?

A No.

Q When you advised the Government that you were entering the cocaine business to help yourself, did they tell you what to do?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained. That is as to form.

Q At one time you received a sample of cocaine, is that correct?

A Yes.

Q You immediately notified Agent Lightcap?

A Right.

Q And he asked you at that time to arrange an introduction, is that correct?

A Right.

Q Did you attempt to arrange an introduction?

A Right.

Q Between Lightcap and whom?

A At that time it was supposedly going to be Kelly.

Q And did you ever introduce Lightcap to Kelly?

A No.

Q Did you ever try to?

A Yes.

Q Did you ever have Kelly at your office?

A Kelly was there.

Q Lightcap didn't show up?

A He was in a trial.

Q Did you ask Lightcap how you should arrange this introduction?

A He just said to arrange the introduction.

Q With him and some other person?

A Yes.

Q Did you inquire of Mr. Kelly whether this Cuban connection spoke English or Spanish? Do you know whether Mr. Lightcap speaks Spanish?

A No.

Q You don't know?

A No.

Q Did you ever hear him speak Spanish?

A I didn't have that many conversations to know.

Q How many times have you seen Susan Marcus?

A Once.

Q That was in your showroom?

A Yes.

Q Did you ever talk to her after that?

A That evening.

Q On the telephone?

A Right

Q You didn't talk to her in person?

A No.

Q Did she mention any names to you in that conversation?

A Yes.

Q What name.

A She said she met Harry and the partner.

Q Did you mention the partner's name?

A Yes.

Q Did you tell the agents that?

A I believe so.

Q When did you tell them?

A Either that was at night and I told them the next day, or I told them that night. They told me to

report any conversations.

Q Did you ask Susan what the partner looked like?

A No.

Q Did you ask her where she met the partner?

A She told me.

Q Where?

A West New York, New Jersey.

Q Where was that phone call made to?

A Excuse me?

Q Where did you receive the phone call?

A My apartment.

Q What time of the day?

A I would say it was early evening.

Q How long after that conversation did you talk to the agents?

A It might have been the next day.

Q Do you remember what day of the week it was?

A It was either a Thursday or Friday, I am not sure.

Q When did you talk to the agents?

A If it was Friday, then I probably spoke to him on Monday, because I usually get him from nine to five.

Q Did you ask Susan for a description of any person?

A No, sir.

Q Did you ask her to supply you with the ethnic background of any person?

A No, sir.

Q Did you ask her to describe the store or premises she was in?

A No, she just mentioned they had a store.

Q Did she tell you what kind of store?

A I think she said boutique.

Q And you are in what business?

A Junior sportswear.

Q What is a boutique?

A It is either a clothes store -- it could be many things. People use that word a lot now.

Q What was your interpretation of the word "boutique"?

A When I deal with them it would be a clothes store.

THE COURT: Small retail shop?

THE WITNESS: Yes, dealing with the retail trade. That is how people cash in on the name.

Q Who gave you the $20 to give to Kelly?

A Nobody.

Q You used your own money?

A Yes, sir.

Q Did you ever get it back from the Government?

A No, sir.

Q What did you eventually do with that cocaine?

A Down the toilet just as they told me.

Q You never asked them to refund the $20?

A No, sir.

Q Did you use cocaine during that period of time?

A I never used it.

Q You say you tested it --

A I didn't say I tested it.

Q You say you had a girl test it?

A I didn't say that.

Q You put it on somebody's lips?

A I put it on nobody's lips.

Q Who did?

A Kelly wanted to show me how good it was, and he took it on his finger and put it on her over here, and said "wait a few minutes", took his finger and went like that.

Q While this was being done the girl was told that cocaine was going to be put on her lips?

A He said,"Just test it," and he went --

Q She knew you were talking about cocaine?

A I guess so.

Q Did you hear that conversation?

A I was conversing with him.

Q What is this girl's name?

A Carol Siguiane.

Q Where is she today?

A I have no idea. The last time I heard she moved out to Smithtown. I don't know where she is.

Q Married or single?

A She was single at the time.

Q Would you spell the last name for us?

A I can't. It is a long Italian last name.

Q How long did she work for you?

A Not too long, about a month and a half, two months.

Q Did you know whether she used cocaine or not?

A No.

Q Did she ever have a conversation with you about cocaine before that day?

A No.

Q Without any conversations with her concerning cocaine, Kelly came up and placed cocaine on her lip?

A That is right.

Q And she didn't object?

A He just went like that.

Q She didn't say it was good or bad cocaine?

A She said she couldn't feel anything when he hit her.

Q She didn't move back when he tried to put cocaine on her lips?

A No, sir.

Q Did she ask what the effects of cocaine would be?

A He just said "Wait a minute, you will see."

Q She didn't seem surprised?

A Not really.

Q She didn't say she liked it?

A No.

Q And she didn't ask you for the sample before you flushed it down the toilet?

A No. She didn't even know what I was doing.

Q At one time you testified about a conversation you had with Harry Shapiro in the evening, is that correct?

A I had many.

Q One that I am referring to where he said he would come over that night and deliver to you.

A I believe that was the first conversation.

Q What time of the evening was that?

A Early evening. I remember I just came home from work and he called.

Q Between six and seven?

A I don't remember.

Q What time did you usually finish work?

A Any time. It was my own business. If we were busy I worked late. If it was slow I went home. I only live five blocks from where I work. I remember it was early, that is all I can remember.

Q Before or after six?

A I couldn't tell you.

Q Before five?

A Probably not.

Q Some time after five?

A Yes. I couldn't be exact on it.

Q Harry told you that he could deliver right away? He didn't have to go any place to pick up the narcotics, did he?

A He didn't say that. He said he could get it over here right away.

Q Did you ask him how long it would take him?

A No, because I couldn't do it.

Q That is for two ounces, is that correct?

A Correct.

Q You don't know what cocaine is, do you?

A I know what cocaine is.

Q You have tasted it?

A No.

Q Used it?

A I told you I never used cocaine.

Q You sold it?

A I never sold it.

Q Did you ever take it in to a chemist?

A No.

Q So that sample you are talking about you wouldn't know whether it was cocaine or not, would you?

A I wouldn't. That is why Kelly asked me to take it and I wouldn't because I didn't know if it was good or bad, and I didn't know what to tell him.

Q When you are referring to cocaine you are referring to what someone else told you?

A What Kelly told me, correct.

Q You gave Kelly $20 for some cocaine, is that correct?

A That is correct.

Q Did you know how much cocaine he gave you?

A He said it was a little less than a spoon, if I remember correctly.

Q Do you know how many spoons go into a gram?

A I am not sure.

Q You knew what his price was for one gram, did you not?

A Not at that time.

Q You knew that afterwards?

A Right.

Q It was $50?

A If I remember.

Q One spoon would be -- how many spoons in a gram?

A I don't know.

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

A I don't know.

Q How many spoons in a quarter of an ounce?

A I guess one forth of what was in an ounce.

Q How many spoons in an ounce?

A I don't know.

Q In any conversation you had with Susan Marcus did she ask you how many spoons were in an ounce?

A No.

Q Did she ask you how many spoons were in a quarter ounce?

A No.

Q Did she ever ask you whether the cocaine was good or bad?

A I believe she asked that and I said well, he told me it is very good, I haven't tried it yet.

Q Did she ever ask you whether anybody had tested the cocaine?

A I don't think so.

Q Did she ever ask you whether it was brown or white cocaine?

A I believe I told her it was brown.

Q This cocaine you saw in that $20 sample,was it brown or white?

A Brown.

Q Of course you have never seen cocaine before then?

A Not at that time, right.

Q You had never seen it after then?

A Yes.

Q When?

A Once.

Q When?

A At a party.

Q When was that?

A Well, after that.

Q This was late June of 1973, wasn't it?

A Yes.

Q How long after that did you see cocaine?

A I couldn't tell you exactly.

Q A month after?

A A couple of months after.

Q Before you went to the grand jury?

A No.

Q More than two months after?

A Yes.

Q Before or after you were sentenced by Judge Tenney?

A I couldn't remember exactly.

Q Was it near that time?

A I am not sure.

Q Did you tell the Government about the cocaine you saw at that party?

A No, because I didn't know whose it was, and I got away from it.

Q You didn't attempt to call any agent to introduce him to anybody?

A No.

Q Those were people you knew at that party, isn't that a fact?

A As a matter of fact, it was somebody I didn't know, and that is why, all right?

Q That was two months after June 29th?

A I don't know. I told you that before.

Q Do you know what day of the week it was?

A I believe it was a weekend.

Q Why does June 29, 1973 stick in your memory?

A It doesn't.

Q But you testified about that date.

A I did not.

Q You testified about late June.

A I did.

Q You testified about the first Monday in July.

A I believe I did.

Q You testified about the second M.nday in July?

A I know there were Mondays for one reason.

Q What was that?

A Bruce can only come down on Mondays.

Q Did you ever ask Kelly for a taste of cocaine?

A Did I ask Kelly for a taste?

Q Yes.

A After?

Q After June 29, 1973.

A Did I ask him, no.

Q Did you ever ask him whether he received any cocaine for your man?

A I believe he was supposed to get another taste for Bruce.

Q Did you ask him about that?

A I believe that Bruce called me up and asked me to ask him if he got it, and Kelly said he couldn't get it and that was the end of that.

Q How long have you known Bruce would want cocaine?

A How long?

Q Yes, when did Bruce first tell you he wanted cocaine?

A A few months before. Since we got arrested, you know.

Q Since you got arrested in 1972?

A Yes.

Q Did Bruce get arrested with you?

A That is right.

Q Bruce agreed to cooperate along with you?

A That is right.

Q When you got the taste of cocaine, that $20 sample, why didn't you call Bruce and tell him you had it?

A I called the agent, who told me to get rid of it, that I shouldn't have it on me, and that is exactly

what I did. There was no sense in calling.

Q But you called Bruce later in July to get a taste of cocaine, is that right?

A I didn't call Bruce.

Q Bruce called you?

A Right.

Q Was Bruce also working with the agents?

A Right.

Q Did there come a time when you introduced the agent to anybody at any time for the purpose --

A I didn't.

Q Did Bruce?

A You would have to ask Bruce. I wasn't there.

Q You were never with Bruce and an agent?

A No.

Q Has Bruce been sentenced to anything?

A Yes.

Q What.

A What he has been sentenced to?

Q Yes.

A A year and a day.

Q When did he get sentenced?

A The same day I did.

Q Was he your partner at any time?

A You can consider it that.

Q How many times did you talk to Susan Marcus over the telephone about cocaine?

A Twice.

Q When was the first time?

A The first time I spoke to her she talked to me about it. I didn't talk to her about it.

Q You never suggested the word cocaine, is that correct?

A The first conversation I had with her, she was snorting cocaine and telling me how good it was.

Q When was that?

A I couldn't tell you. She called up a few times asking -- she was friendly with one of my manufacturers that I was representing at the time.

Q You never met her personally?

A Not until the day she stepped in the showroom.

Q Just over the phone she told you she was snorting cocaine?

A That is right.

Q Did you ask her where she was getting it?

A No.

Q Didn't the agents ask you to try to find connections for them?

A Many times.

Q And you still never asked Susan Marcus who her connection was, is that correct?

A Correct.

Q And Robert Kelly brought up cocaine the first time, is that correct?

A The first time, no.

Q You brought it up?

A You mean in a conversation?

Q Yes.

A I believe Kelly did. I thought you mean brought it up -- you know.

Q When you called to ask for Robert Kelly, Harry Shapiro got on the phone and started to talk about cocaine?

A As soon as he knew who I was he told me to forget about Kelly, and he told me that the -- he said he had given Kelly the sample to give to me, not to charge me $20 for it, that Kelly was an idiot and I shouldn't deal with him.

Q When did you first talk to a federal agent about this case?

A After I got the sample.

Q How many times did you talk to a federal agent?

A I couldn't tell you offhand.

Q During these conversations did they take notes as to what you said?

A Most of my conversations were over the phone, so I couldn't tell you.

Q When for the first time did you talk to an Assistant United States Attorney about this case?

A At the grand jury.

Q Who was the Assistant United States Attorney?

A Mr. Nesland.

Q Did you give him a statement or did he take notes?

A He took notes.

Q When was that?

A Right before the grand jury.

Q Was an agent present?

A I don't remember. There might have been.

Q After you testified before the grand jury did you discuss this with any other Assistant United States Attorney?

A Yes.

Q How many times, and with whom?

A They changed United States Attorneys, and it was Frank Wall, and the third time I discussed it was with

Mr. Buchwald.

Q You discussed it three times?

A Three different times, right.

Q How many different agents have you discussed it with?

A They were just two agents.

Q Who were they?

A Lightcap and Korniloff.

Q Are you testifying pursuant to a subpoena?

A No, sir.

Q You came here of your own free will?

A Yes, sir.

Q At the time of your sentence --

THE COURT: I am not sure that is accurate. He came here in response to a writ.

MR. BUCHWALD: There is a writ outstanding.

THE COURT: Since he is serving a sentence he can't come here of his own free will. He was brought here by a writ ad testificandum.

MR. BUCHWALD: That is correct.

Q At the time you received the two-year sentence you had not yet testified in open court against anyone, is that correct?

A Correct.

Q And this is the first time that you have ever testified against anyone in any trial in open court, is that correct?

A That is correct.

Q And your sentence can be reviewed on December 18, is that correct?

A I believe so.

MR. STONE: No further questions.

THE COURT: Anything else, Mr. Buchwald?

MR. BUCHWALD: If I might have one moment, your Honor.

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Lorber, your showroom on 1411 Broadway is on what floor?

A 17.

Q How many other showrooms or stores are on that floor?

A 20, 25.

Q Do you know what kind of showroom -- what kind of showroom do you have?

A What do we show?

Q Yes.

A Junior sportswear.

Q What does that consist of, what kind of items?

A Tops, pants, jackets sometimes.

Q Do you display shoes?

THE COURT: Children or adults?

THE WITNESS: Adults, young ladies.

Q Do you display shoes?

A No.

Q Are any of your stores or in the showroom shoe stores?

A On the showroom?

Q Yes.

A No, sir.

Q If you focus back again to the day on which I believe you testified Susan Marcus was at your showroom.

A Yes.

Q And that evening you spoke with her again, is that correct?

A She called me.

Q This was on the telephone?

A Yes.

Q Did she tell you where she had been?

A She said she went to New Jersey with Harry.

Q Did she say she had met anyone else?

A She said she met Harry's partner.

Q Did she give you the name of Harry's partner?

A Yes.

Q What was that name?

A Candy.

Q Candy?

A That is what she said.

Q Did she say anything else about Candy?

A She just said they were nice guys.

Q Did she say what she had done in New Jersey?

A She said they had very good coke, and she thanked me for introducing her

Q When were you sentenced, Mr. Lorber?

A I believe August 18.

Q Do you remember when you testified in front of the grand jury?

A I don't remember the date.

Q If I said July 18, would that refresh your recollection?

A It could be, I am not sure.

Q Approximately?

A It must have been maybe July 18. I think it was a month before I got sentenced.

Q And at any time in connection with your testimony here has anyone made any threats to you in order

to induce you to testify?

A No, sir.

Q Have you been told that you would get a lighter sentence?

A No, sir.

Q Have you been told anything by the agents or members of the United States Attorney's office?

A Yes, you told me that in no way could you recommend a lighter sentence or could I be guarantied anything out of this.

Q Were you told that anything would be done as a result of your testimony?

A No, sir.

Q Mr. Lorber, do you recall how many times from the time in which the sample of cocaine was delivered to you, how many times you spoke with federal agents about Bobby Kelly?

A I couldn't recall, because a lot of times I called and they weren't there. I couldn't tell you exactly.

MR. BUCHWALD: No further questions.

RECROSS EXAMINATION

BY MR. WILLIS:

Q No promises have been made to you by the federal Government, have there, concerning your sentence or what is going to happen to you, is that correct?

A That is right.

Q Can I assume that you don't like prison?

THE COURT: No, I won't permit that question.

Q Do you like prison?

THE COURT: I won't permit that either. That is perfectly obvious. Who likes prisons? You can make that argument to the jury.

Q Do you expect by coming here today, you are going to shorten your prison term, yes or no?

A I hope it might help me.

Q 1411 Broadway, and correct me if I am wrong, is it not a drug haven?

A No.

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q To your knowledge, a lot of drugs are transferred around 1411 Broadway?

MR. BUCHWALD: Objection.

THE COURT: Sustained. It wouldn't make any

difference if they are.

Q How old is Susan Marcus?

A I have no idea.

Q Do you know her well?

A I told you, I only met her once.

Q Once?

A Once.

Q To your knowledge, is she a drug user?

A From the conversations I had with her I would say she uses cocaine.

Q Is that the conversation where she told you she was high on the phone from having taken cocaine?

MR. BUCHWALD: Objection.

THE COURT: I will permit that.

A Yes.

Q Do you know whether Susan Marcus has been arrested?

A I have no idea. I told you, I only met her once.

Q Did you meet her when you went to the grand jury?

A No.

Q Did you ever see Susan Marcus take drugs?

A No.

Q Do you know where she worked?

A No.

Q Do you know what position she held?

A No.

Q Do you know any of her friends?

A No, except for the guy that I used to represent his line.

Q What is his name?

A Harlan Matthews. That is the only friend of hers I know.

Q Harlan Matthews, is that the Harlan Matthews that imports goods from India?

A Right.

Q Imports Madras shirts?

A Yes.

Q Are you saying that you were introduced or met Susan Marcus in the company of Harlan Matthews?

A No.

Q Would you please tell me or clarify the connection between Harlan Matthews and Susan Marcus?

A I do believe she went to school with him, and I represented his line only for a month or two, because I found, as you say, those kind of shirts are not salable any more.

Q Excuse me?

A I only represetned his line for a month, a month and a half, because I found those shirts were not salable any more. During the time I was representing him she called up to talk to him, and he wasn't there, and I had a few conversations with her on the phone.

Q The conversations you had on the phone with her, did you determine why she was in his office?

A She wasn't.

Q Did you determine her connection with Matthews, why she was on the phone.

A She went to school with him.

MR. BUCHWALD: Objection as to relevancy.

THE COURT: I will permit it.

Q She went to school with him?

A I believe they went to school together.

Q That was the whole connection?

A That was it.

Q Susan Marcus said she went to New Jersey, correct?

A Correct.

Q She went to New Jersey to purchase drugs, correct?

A Correct.

Q In particular cocaine?

A Right.

Q She said in fact she purchased drugs in New Jersey.

A Right.

Q How much did she pay for those drugs?

A She told me $250.

Q Who did she give the $250 to?

A I wouldn't know.

Q Did you ever know Susan Marcus to be in the company of Harry Shapiro?

A I saw her.

Q Were they boy friend and girl friend?

A Just met.

Q After they just met, how many times did you see them in each other's company?

A I never saw Susan again. I saw Harry. I don't know how many times he saw her or what.

Q How about Harry Shapiro, is he a user of cocaine to your knowledge?

A I have no idea.

Q Do you understand the lingo, the words that are used in the drug field?

A What words are you talking about?

Q To be wiped out, do you know what that means?

A Yes.

Q What does it mean?

A To be high.

Q You have been high on barbiturates, have you not?

A Yes, not for some time though.

Q May I assume for the time you have been in prison you haven't been high?

A You can assume that, and you can assume a lot before that.

Q How about for the time before you testified to the United States grand jury, were you still using barbiturates, sir?

A No.

Q You just cut them off like that?

A That is right.

Q No habit?

A No habit.

Q Were you ever -- well, do you know what the word"struck out"means?

A Never.

Q Do you know what the word "struck out" means?

A I know.

Q What does it mean?

A Not to have any drugs when you need them.

Q Excuse me?

A I heard it used in different instances, drugs, money, not to have any money when you need it, not to have any drugs when you need it. Not to have what you need at the time you need it.

Q Were you ever struck out on barbiturates?

A No.

Q Would you tell this jury what your habit was?

A I wouldn't even call it a habit. I used to use them. That would not be a habit. I could do without it. That makes it not a habit.

Q You could do without them?

A Yes.

Q At one 24 hour given period of time what is the maximum amount of barbiturates you have consumed, sir?

A Not many, two or three.

Q Name the barbiturates, what type?

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

Q Did you ever use Truanols?

A Yes.

Q Did you ever use Secanols?

A No.

Q Do you know the difference between Truanol and Secanol?

A Certainly.

Q What is the difference?

A Secanol os red amd Truanoll are -- it is two different colors.

Q That is the color difference. Do you know the difference in the effect?

A No, I thought they were basically the same.

Q The most you ever took in a 24 hour period were two to three?

A Yes.

Q Did you ever take drugs while working?

A No.

Q Did you take any drugs or were you on any drugs during the period of time in which you were communicating with the Federal Bureau of Narcotics?

A I already told you I stopped.

Q What date did you stop?

A I couldn't tell you that. Right after I was arrested in June of 1972 I decided it was a bad idea.

Q You stopped taking drugs in June of 1972?

A That is when I got arrested and I decided it was a bad idea.

Q Now I ask you why you were selling drugs.

THE COURT: You may not. Next question.

Q What particular drugs were you selling, name them?

MR. BUCHWALD: Objection.

THE COURT: He was selling drugs? Is there testimony that he sold drugs?

MR. WILLIS: Yes.

THE COURT: Did you?

THE WITNESS: When?

THE COURT: At any time.

MR. WILLIS: The barbiturates, your Honor.

THE COURT: This is the detail of the offense for which he was convicted. I will sustain the objection.

Q At one time did you say you had on your personal possession 10,000 barbiturates?

A No.

Q Give me the quantity.

A It was a half pound of Truanol powder.

Q Half pound of Truanol powder?

A Right.

Q Do you know how many pills you could make on the market with a half pound of powder?

A Yes.

Q How many, sir?

A 6500.

Q 6500 pills?

A Yes.

Q Were any of those 6500 pills for your personal use?

A No.

Q They were all to be distributed in the streets, correct?

A I never made the pills.

Q You never made them, but it was your intent to make them and distribute them, isn't that a fact?

A No.

Q Sir, did you plead guilty in a court of law --

A That is right.

Q To possession?

A Yes.

Q Of this drug?

A Yes.

Q How about possession with intent to distribute?

A That is what they arrested me for.

Q Is that what you pleaded guilty to, sir?

A That is right.

Q Did you intend to distribute a half pound of

Truanol drug on the street?

THE COURT: No more on that. We have had enough of it. Let's go.

MR. WILLIS: No further questions.

RECROSS EXAMINATION

BY MR. STONE:

Q You handled cocaine? June 1973?

A No.

Q You handled cocaine some time in June?

A I didn't handle it. He gave it to me in an aluminum foil.

Q It was in your hand at one time or another?

A Yes.

Q Did the agents tell you that you would not be prosecuted for that?

A They told me to get rid of it because they didn't want the sample, and that I should get rid of it because I can get in trouble.

Q You have never been prosecuted for handling that cocaine, have you?

A That is right.

MR. STONE: No further questions.

THE COURT: Anything else?

MR. BUCHWALD: No further questions.

THE COURT: Thank you.

(Witness excused.)

MR. BUCHWALD: The Government calls Mrs. Susan Marcus.

S U S A N M A R C U S, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

THE COURT: Try to keep your voice up. This is a big room, and it is hard to hear. We want the farthest jurors to hear you.

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mrs. Marcus, do you know an individual by the name of Michael Lorber?

A Yes, I do.

Q Have you ever met Michael Lorber person to person?

A Yes.

Q Where was that?

A In a showroom on Broadway. I think it was 1411 Broadway.

Q How many times have you been to that showroom?

A Once.

Q How many times have you met Michael Lorber?

A Once.

Q Mrs. Marcus, would you state to the Court and the jury what happened on that occasion when you met Michael Lorber at the showroom?

A I had spoken to him on the telephone, and I was to meet him at his showroom to buy a quarter of an ounce of cocaine that he was going to have for me.

Q Did you meet him there?

A Yes.

Q What happened when you met him there?

A When I got there he said that he didn't have it there and that I would have to wait for his friend, who was going to come with it. Then he would give it to me. But his friend came and when he got there Mike told me that his friend didn't have it. I think his friend told me that he didn't have it, that I would have to go with him to get it, to some place close by.

Q Did Michael Lorber introduce this person to you?

A Yes, he did.

Q Did he tell you what his name was?

A He said his name was Harry.

Q You then spoke with Harry there at the showroom?

A Yes, I did.

Q What did you do after you spoke with Harry?

A He and I left. We got downstairs and he said we had to go to New Jersey. He said that it was very close, that we should just take a bus there, so we did that.

Q You took a bus to New Jersey?

A Yes.

Q Where did you go, what bus stop in New Jersey?

A After we got off the bus, I am not sure whether we talked or took a cab to Harris Shoe outlet. I think we walked there.

Q Do you remember the name of that?

A It was called Fiesta Shoes.

Q Up to this point had you spoken with Harry at all?

A Before that day I had never met him before.

Q Before the point that you arrived at the factory.

A We had talked on the bus, yes.

Q Did you have any money with you?

A Yes, I did. I had $250.

Q Did you talk to Harry about the money at all?

A No. Not until we got to the shoe factory and on the way up the stairs Harry asked me to give him the money and I did.

Q You gave him the money?

A Yes.

Q How much was that?

A $250.

Q Where was this again?

A It was at the Fiesta Shoe Factory on the stairs on the way upstairs.

THE COURT: What town was it in?

THE WITNESS: I think it was Union City.

Q Then did you go inside into Fiesta?

A Yes, we did.

Q What happened when you went inside?

A When we got inside Harry introduced me to his partner, and Harry told me that it wasn't there, that they didn't like to keep it around there, and that I would have to wait. He was going to take me to some other place and then -- where they had it, and he would give it to me.

Q You say he introduced you to his partner. Did he tell you his partner's name?

A He introduced him as Candy.

Q Would you look around the courtroom and tell me if you see in the courtroom the individual who was introduced to you by Harry?

A I believe that it is the last person on the left. At the table directly in front of you.

Q Would you point to that person.

THE COURT: I think she has identified the defendant Mayet.

There are four people sitting at the table. Which is the person you have identified?

THE WITNESS: The last person on the left.

THE COURT: Okay. I think the record can indicate that the identification was made.

Q How long were you at Fiesta?

A I would say about 45 minutes.

Q During this time was Harry with you all the time?

A We were in the same room. We weren't together speaking the entire time.

Q How long had you been at Fiesta when Harry introduced you?

A He introduced me immediately.

Q After this 45 minute period, what if anything did you do?

A We left and drove to their retail shoe store.

Q When you say "we" who are you referring to?

A Harry, Candy and I.

Q And you drove some place?

A Yes, to this retail shoe store that was about

fifteen minutes away.

Q Who drove?

A Candy drove.

Q Do you remember what kind of car it was?

A I think it was a station wagon.

Q What was the name of the shoe store that you drove to?

A It was called Puma.

Q Did you go into Puma?

A Yes, I did.

Q Who were you with when you went into Puma?

A The three of us went in together.

Q This was a retail shoe store?

A Yes, it was a regular shoe store.

Q What happened when you arrived at Puma, what if anything did you say, what if anything did Harry say, what if anything did Candy say?

A When we got there Harry told me that it wasn't there, that Candy had to go get it. They didn't like to keep it there either. That I should wait a short amount of time and he would bring it back.

Q Who would bring it back?

A Candy would bring it back.

Q Then what if anything happened?

A Then I waited for about an hour and a half and I just sat in the store waiting, and finally Candy came back.

Q Had Candy left the store?

A Yes, he had.

Q Did Candy tell you where he was going?

A No, he did not.

Q Did Harry tell you where he was going?

A Harry said he was going to his girl friend's house to get it.

Q Did Harry give you the name of the girl?

A He said he was going to his girl friend Maria's house.

Q Then Candy left?

A Yes.

Q How long was it before Candy returned?

A It was a long time. I don't know exactly how long it was. It was about an hour now.

Q When he returned what if anything happened?

A When he came back the three of us went into the back room together, and one --

Q This is a back room where?

A In the store. There was a back room in the store.

When he came back the three of us went into the back room and one of them handed me like a silver foil package of cocaine.

When you went into the back room could you still see out into the store proper?

A No, we closed the door.

Q Do you know which one actually handed you this package you have described?

A I think it was Candy, but I am not absolutely sure because Harry said to me when I opened it up, "Gee, there is really a lot there," so I think he wasn't the one who handed it to me.

Q You think who wasn't the one?

A That Harry didn't, but I am not absolutely positive.

Q Would you describe this package again?

A It was a silver foil, aluminum foil, small package, folded up.

Q Who was in the back room at this time?

A Harry, Candy and I.

Q What if anything did you do with the package?

A I opened it up and then the three of us all sniffed some together.

Q All three of you?

A Yes.

THE COURT: Miss Marcus, is that the way you take cocaine?

THE WITNESS: Yes.

THE COURT: You sniff it through your nostrils?

THE WITNESS: Yes.

THE COURT: And the three of you did it with this package that was delivered to you?

THE WITNESS: Yes, sir.

Q Then what if anything happened to the package?

A Then I folded it up and put it in my pocketbook and left with Harry, and he drove me back to New York.

MR. BUCHWALD: No further questions.

CROSS EXAMINATION

BY MR. WILLIS:

Q How old are you, Miss Marcus?

A Twenty-eight.

Q Are you employed now?

A Yes.

Q What was the date that you went to New Jersey to purchase cocaine?

A I don't know the date. I don't remember the date. It was in the late spring some time.

Q Excuse me?

A The late spring.

Q Can you be more specific?

A It was either the end of May or some time in June.

Q Do you know a Harlan Matthews?

A Yes, I do.

Q How do you know him?

A I went to college with him, and he is a good friend of mine.

Q Did you ever work in the retail sales clothing industry?

A I am now doing that. Not in retailing, wholesaling.

Q Do you work at 1411 Broadway?

A No.

Q How about 1407 Broadway?

A Yes, 1407.

Q What were you doing or what was your employment in June of this year.

A I was not working.

Q You were unemployed?

A Right. I had a summer house and I was living in it --

Q You were at that time twenty-seven years old?

Q When did you start to use drugs?

A I guess in college I smoked pot.

Q College would be how many years ago?

A About four years ago. Five years ago.

Q And you continued to use drugs until approximately June of 1973?

A Yes, I never had cocaine until about two years ago, ever.

Q How about heroin?

A I never had heroin.

Q Ever sniff it?

A Never.

Q Barbiturates?

A No, the only other drugs I have had have been prescribed to me by doctors.

Q By your husband?

A My husband has prescribed drugs to me.

Q Barbiturates?

A Occasionally at times.

Q Well, in the five-year period going back to when you were in college, what type of drugs have you used?

A Just marijuana in college.

Q That is it?

A Yes.

Q How about your involvement with cocaine, when did that start?

A A couple of years ago. I was selling for a friend of mine who was in business. I used to go around to different stores in New York City trying to sell a product, and somebody offered it to me once and I tried it.

Q A friend of yours?

A No, not a friend, it was somebody I was selling to.

Q Someone you were selling clothing to?

A It wasn't clothing, it was like a small type of decoration jewelry item.

Q And he offered you some cocaine?

A Yes.

Q Do you know what cocaine is?

A I don't know its exact chemical composition.

Q Is it habit forming?

A No.

Q Can you shoot cocaine?

A I guess you can. I never have.

Q You can sniff it?

A Excuse me?

Q You can sniff it?

A Yes.

Q Did you ever burn your nostrils from sniffing cocaine?

MR. BUCHWALD: Objection, your Honor.

THE COURT: That doesn't seem very relevant to me. I think I will sustain the objection.

MR. WILLIS: It is relevant to the question of her use of the particular drug.

THE COURT: I think that is enough on this.

Q Have you ever been examined by a physician in connection with your use of the drug coke or cocaine?

A No.

Q Mrs. Marcus, in June of 1973 you travelled from New York to New Jersey, correct?

A Yes.

Q You waited in one shoe store for approximately an hour, correct?

A Yes.

Q You went to another shoe store and waited approximately an hour and a half?

A Correct.

Q To get cocaine.

A Yes.

Q Did you have a habit on that drug?

A No, you see, I had already given Harry the money

before we got to the first place.

Q And you didn't want to ask for your money back?

A To tell you the truth, I had done this so few times that I was embarrassed, yes.

Q You had done what so few times?

A I had bought cocaine so infrequently that I didn't really know whether this was the way that it happened. I felt uncomfortable. I was sort of afraid to ask him for it back.

Q Ask what?

A I was kind of afraid to ask for the money back, because it was taking so long.

Q What time did you leave New York City with Harry Shapiro?

A I would say it was around three o'clock or 2:30.

Q What time did you finally leave New Jersey?

A I would say it was about 6:30 or later. I am not exactly sure of the time.

Q You meet Shapiro in New York, correct?

A Yes.

Q It is known to you when you meet him that you can or may be able to purchase cocaine?

A Yes.

Q Had you discussed the price with Shapiro before

you met with him?

A No. I had discussed it with Mike. He told me how much to bring.

Q May I ask you why you were using cocaine?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q Your husband, who you say is a phyciatrist, was he aware of your use of this drug?

A No.

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q What did you tell your husband in the end of June when you were gone until 6:30 at night when you returned home. Did you tell him where you were?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Did you meet Shapiro in New York?

THE COURT: You mean later?

MR. WILLIS: On this particular day.

THE COURT: I understand you met him at Mike's showroom.

THE WITNESS: Right.

Q And what were you wearing that day?

A I was wearing a gray jacket, a navy blue skirt

a white blouse, and I think I had on boots.

Q And boots?

A I think so, yes.

Q In the summer?

A They were denim.

Q Denim boots?

A Yes.

Q Tell me what Mr. Shapiro was wearing?

A He was wearing white pants and white shoes and a short sleeve kind of polyester kind of shirt.

Q Previous to June, the latter part of June, at this meeting with Mr. Shapiro, had you ever gone into the State of New Jersey to purchase cocaine?

A No, never.

Q Do you know New Jersey?

A No, I don't. I don't think -- that is one of the only times I ever went there.

Q Do you know Union City?

A I had never been there before.

Q West New York?

A No.

Q Do you know Bergenline Avenue?

A I think that is where the retail shoe store is.

Q Bergenline Avenue?

A I am not sure, though.

Q How do you get to New Jersey, by what transportation?

A How did I get there.

Q That night with Harry Shapiro.

A I took a bus.

Q What number bus?

A I don't know. It was an express bus.

Q An express bus to where?

A To Union City.

Q Where in Union City did you get off that bus?

A I don't know.

Q Where did you catch the bus?

A At the Port Authority.

Q How much fare did you pay?

A I don't really remember. I think Harry paid for it.

Q Aoe you sure?

A I am not absolutely sure, no.

Q Did you get a receipt for the fare?

A No.

Q You are sure of that?

A Yes.

Q But you are not --

A I don't remember gettinga receipt. I could have, but I don't think so.

Q It is a little hazy?

A Possibly, you know. I don't think that I paid for it. I am sure I didn't get a receipt, because I didn't --

Q Why are you sure you didn't get a receipt?

A Because it just doesn't -- I am not sure. Okay.

Q Did you pay, or did Harry pay for the fares?

A What?

Q Who paid?

A I think Harry did.

Q Are you sure?

A To the best of my recollection he paid.

Q Who got on the bus first, you or Harry?

MR. BUCHWALD: Objection.

THE COURT: I assume that he was a polite gentleman?

THE WITNESS: Right.

Q You got on first?

A Yes.

Q Where did you sit on the bus?

A On the lefthand side.

Q You remember that?

A Yes.

Q Have you gone over any of this testimony or spoke to the United States Attorney?

A I have spoken to him, yes.

Q When you spoke to the United States Attorney did he tell you that there were certain things that were important in this case? Did he tell you that?

A No.

Q Who initiated the conversation between you and the United States Attorney, you or the Government?

A My lawyer.

Q Your attorney?

A Yes.

Q Were you in trouble with the Government?

A I don't know if I was.

Q You retained an attorney, did you not?

A Yes.

Q Why did you retain an attorney?

A Because I had been called to come down and speak to two federal officers about a sale I was alleged to have made.

Q That you had made?

A That I was the buyer.

Q Did you think that you were in trouble when you

got called down to discuss that with the Government?

A I thought that perhaps I might be, yes.

Q You might be in trouble?

A Yes.

Q Did you retain an attorney?

A Yes, I did.

Q Did the advice from your attorney, did it indicate to you that you might have a problem?

A Yes.

Q Were you accompanied by your attorney when you went to speak to the Government?

A When I went to speak to the Government?

Q The Government, meaning the United States Attorney.

A Yes, I was.

Q When did you speak to the United States Attorney the first time?

A The first time was about three and a half weeks ago. I didn't speak. My attorney spoke to him. I didn't say anything.

Q You didn't say a word?

A No.

Q Did you listen to the conversation?

A No, I was not present.

Q You were alleged to be a buyer of narcotics?

A Yes.

Q When did this incident supposedly take place when you were a buyer, recently?

A In June.

THE COURT: Is it the trip to New Jersey?

THE WITNESS: It is this case we are speaking about.

THE COURT: I think she is talking about the same incident.

THE WITNESS: Yes.

Q It was this particular indicent that you were a buyer at?

A Correct.

Q Do you know how the Government got that information?

A I think that Mike told them about me.

Q Mike being the fellow Lorber?

A Yes.

Q How about Harry Shapiro, did he spill the beans?

A I believe --

MR. BUCHWALD: Objection to the characterization.

THE COURT: Well --

MR. WILLIS: I am sorry, Judge. It is a slip

of the tongue.

THE WITNESS: I believe he did, yes.

Q Did the United States Attorney tell you how they got the information on you?

A Pardon?

Q Did the United States Attorney tell you how they got the information on you?

A No.

Q You said not too long ago that you gave up drugs.

A Yes, I did.

Q The first time you had any involvement with the Government was approximately three and a half weeks ago?

A Right.

Q When did you give drugs up?

A Then.

Q Was it the scare?

A Yes, I think so.

Q And you just quit all drugs?

A Yes.

Q Do you still smoke grass?

A No.

Q When you spoke to the United States Attorney did he seem to know a lot about this case?

A Yes.

MR. BUCHWALD: Objection, your Honor.

THE COURT: I will permit it.

Q Did he tell you what you had done?

A Well, you see, I had already spoken to my lawyer, and my lawyer had let me know that they knew.

Q Pretty much knew what went on?

A Yes.

Q Were they concerned at that time with your information about a Maria Aguilar?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Yes. I will permit you to ask what was said, but not as to her opinion of what they were concerned about. Everything that was said and done, of course.

Q To your knowledge, when you met with the Government approximately three and a half weeks ago, did they reveal to you information concerning Maria Aguilar?

A No.

Q Did they want to know whether you purchased drugs from Maria Aguilar?

A No.

Q Did Maria Aguilar sell you any drugs?

A No.

Q Do you know Maria Aguilar?

A No.

Q Have you ever seen her before?

A No.

Q Did she ever sell you drugs?

A No.

MR. WILLIS: May I approach the side bar, your Honor?

THE COURT: If you think we must, all right.

(At the side bar.)

MR. WILLIS: I brought to the Court's attention a letter I received from the United States Attorney. The particular reason for calling --

MR. STONE: Wouldn't we be better off on the other side?

THE COURT: The witness is there.

MR. WILLIS: The particular reason for the Government calling Susan Marcus, in their own written letter it says it will be contended at the trial by the Government that both of your clients, meaning Miss Aguilar, participated in the transactions about which Susan Marcus will testify to. Her offering in her testimony is in no way --

THE COURT: It is subject to connection, and if they don't connect it as far as your client is concerned

I will consider a motion to strike.

MR. WILLIS: Thank you.

(In open court.)

Q You were talking to the Government about this sale of cocaine. Did the Government tell you that they had an indictment?

A Did they tell me they had an indictment against who?

Q Mr. Mayet, Miss Aguilar, Robert Shapiro and Mr. Kelly?

A Not at the first meeting.

Q Did they eventually tell you that?

A Yes, they told my lawyer.

Q Did they tell you why it was important for you to come to this courtroom and testify?

A No.

Q They never told you why?

A They did not tell me why. My lawyer advised me that it would be in my best interest to come here and tell the truth about what happened.

Q Have you been indicted?

A No, I have not.

Q Has your lawyer advised you that you may be indicted?

A Yes, that I may be.

Q Are you coming here to testify to avoid or attempt to avoid indictment?

A Yes, absolutely.

Q Have you prepared your testimony that you are giving now with any Government lawyers?

THE COURT: I think that is objectionable as to form. You can ask her with whom she has had discussions, names, everything that was said, but prepared I think is a conclusion.

Q How many times have you met with the United States Government?

A On that first day and then three times after that.

Q Four times in all?

A Yes, but only three times in person.

Q One of those times was what?

A I wasn't present during the time.--

Q Three times?

A Yes.

Q When was the last time, going back now before today?

A Yesterday.

Q Who did you talk to yesterday?

A To Attorney Buchwald.

Q The United States Attorney in the courtroom?

A Yes.

Q Would you tell me what the conversation was about? Was it about your testimony today?

A It was about everything that had happened on that day.

Q Did you tell Mr. Buchwald when you met with him exactly what Harry Shapiro was wearing in June of 1973?

A No.

Q You mean for the first time since June 1973 you remembered what Harry Shapiro was wearing?

A I am aware of fashions. I remember clothes a lot.

Q Because you are aware of fashions you are able to recall several months later exactly what Harry Shapiro was wearing, is that correct?

A Possibly, or I just possibly might remember because I might just remember.

Q Isn't it correct now that Harry Shapiro was wearing white pants?

A Yes. You see, I remembered that he had on a shirt that his girl friend had made, and he told me. He mentioned it.

Q His girl friend had made him?

A Right.

Q Who was his girl friend?

A I don't know.

Q Didn't you testify that Harry Shapiro went to his girl friend's apartment to get drugs to sell to you in June?

A No.

Q Didn't you say that Harry Shapiro left you at the Palmer or Puma shoe store?

THE COURT: Puma.

I think that was Candy, didn't you say?

THE WITNESS: Yes.

Q It wasn't Harry Shapiro?

A No.

Q It was Candy who supposedly left to go to his girl friend?

A Yes.

Q The name of the girl friend was what, did you say?

A Maria.

Q How do you know that?

A The reason that I remember that is because it was taking him, Candy, a long time there. Harry called him up there at her house.

Q Harry called him where?

A Harry called Candy up at Maria's house on the telephone when I was in the room.

Q How do you know Candy called Maria's house on the telephone?

A It was Harry.

Q How do you know Harry did that?

A I don't.

Q Then how come you are testifying in this courtroom and implicating this girl --

THE COURT: No. Wait, don't answer that question. It is improper as to form. Let's start over again.

MR. WILLIS: I am sorry. I will change the form and ask again.

Q If you really don't know, why are you testifying--

THE COURT: That is not any good either.

MR. WILLIS: I will try it again, Judge.

THE COURT: Just ask her what happened. You are getting into an argument with the witness, and putting it in the form of a conclusion and argument.

Q May I ask you, I notice -- and I don't mean this facetiously -- but you looked to the back of the courtroom.

THE COURT: I do not permit that either. Do not

make a statement, ask a question.

Q Is something bothering you in the back of the courtroom?

A No, I didn't realize that I had.

Q When you were in the shoe store and Harry Shapiro went to the telephone to make a call, how do you know as a fact that he called a girl Maria at her apartment?

A I only know what I saw and what I heard, that is as much as I know.

Q Tell me what you saw and tell me what you heard.

A I saw Harry walk to the telephone. I saw him dial a number, and I heard him say Maria's name when he was on the other end of the phone. That is as much as I know.

Q Maria who?

A I didn't hear her last name.

Q Just a name Maria?

A Yes.

Q Could it have been the name Marie? The question is, could it have been the name Marie?

MR. BUCHWALD: Objection.

THE COURT: Anything is possible. That is

objectionable.

Is your best recollection that it was Maria?

THE WITNESS: Yes.

THE COURT: As opposed to Marie?

THE WITNESS: Yes.

THE COURT: Go on.

Q Did the Government indicate that this was very important information. This name Maris, that is.

THE COURT: When she talked to the Assistant United States Attorney?

MR. WILLIS: Yes.

Q This name Maria was important?

A They asked me, but they didn't specify -- they didn't tell me what was important and what wasn't important.

Q Did they tell you that there was a girl about to be tried in the United States District Court by the name of Maria Aguilar?

A They didn't, but my attorney showed me the list of indictments.

Q On the indictment there was a girl by the name of Maria Aguilar, was there not?

A Yes.

Q And was this ever tied up with the United States

Attorney? Did he ever explain to you or go over the fact that your witness to a phone call involving drugs with a girl named Maria --

THE COURT: No, I will not permit an answer to that question. That is an argument. You can make it to the jury later, of course.

MR. WILLIS: Sorry, Judge. I will go on.

Q The phone call was placed to a phone number while you are standing near Harry Shapiro?

A Yes.

Q Was it a pay phone?

A No.

Q Were you in a room?

A Yes.

Q How big was the room?

A I don't know, it was a small shoe store. It was a small room.

Q In the back of the shoe store?

A No, in the front, right at the cash register.

Q At the cash register?

A Yes.

Q Were there patrons in the store at the time?

A There could have been. I don't remember.

Q What time was it that the phone call was made?

A It was late. It was about 5:30, a quarter of six.

Q Who was behind the register?

A A girl who was operating the cash register.

Q What was her name?

A I don't know. I don't think I was introduced to her.

MR. WILLIS: Excuse me for one moment, Judge.

THE COURT: Sure.

Q I want you to look down from the witness chair at Maria Aguilar, and I want you to tell me whether you remember seeing her in the store working the register on that night?

A No. She was not there.

Q Who else was in the store? Strike that.

There was a girl working on the register?

A Yes.

Q What was that girl wearing?

A She had on pants. I think she had on dungarees.

Q You said before that you recognized clothes. You just recognized dungarees. What else do you remember about that girl?

A She was very small.

Q What was she wearing?

A She had on very high heeled shoes.

Q Now you are remembering it --

THE COURT: No comments, just ask the questions.

Q What color was her shirt?

A I don't remember. I really don't remember.

Q You don't remember her clothing, do you?

A I remember she had on tight pants and high heel shoes.

Q Someone returns with cocaine?

A Yes.

Q Who did you say came with the cocaine?

A Who did I say what?

Q Came back to the store with the cocaine.

A I believe that Candy did.

Q But you are not even sure of that, are you?

A I am pretty sure.

Q I don't know what the word "pretty" means.

THE COURT: No argument or comment, next question.

Q Someone came back with the drugs?

A Right.

Q You tested it?

A Yes.

Q How do you test cocaine?

A We each sniffed some.

Q Who is "each" of us? Name them.

A Harry, Candy and myself.

Q Where did you sniff it?

A There was a back room off of the main room of the store.

Q When you say you sniffed it, do you know what sniff is?

A Yes.

Q Did you stick it in your nose and sniff it up?

A Yes.

Q Does it burn you?

A I don't know that it necessarily burns you.

Q What does it do to you, cocaine? You are sticking a substance in your nose. What do you expect to get from it? What do you feel like that you do that?

A It gives you a feeling of euphoria.

Q Did you have a feeling of euphoria when you sniffed this cocaine?

A Yes.

Q How long did that feeling of euphoria last?

A Maybe twenty minutes.

Q Twenty minutes?

A Yes.

Q Prior to sniffing the cocaine that was brough to you by someone, Candy or Harry, when was the last time before that that you had sniffed cocaine? Had you sniffed it that afternoon at all?

A No.

Q How about that evening before you arrived at the store?

A No.

Q Any drugs?

A No.

Q A little marijuana?

A No.

Q Did you have any marijuana on you?

A No.

Q Have you taken pills?

A What do you mean?

Q Pills, ups, downs.

A I have only taken prescription drugs.

Q On that day in question, when you are at the shoe store in Union City, you had had no other drugs in your system for how long a period of time before you sniffed that cocaine?

A I might have had pot that week, but I hadn't had cocaine for -- I don't know, a month or a couple of months.

I am not absolutely sure -- now thinking about it, we might have had some in the factory. I don't remember.

Q You might have had some in the shoe factory?

A Right.

Q The shoe factory being the place where you went in Union City?

A Right. I don't think we did, but --

Q I want you to think. Could you have taken cocaine before Harry --

A I didn't have any.

Q Could you have taken cocaine or some drug before Harry or Candy returned?

A No.

Q You say you took it in the factory?

THE COURT: She didn't say she took it in the factory. She thought at one time she may have taken it in the factory.

Q When might you have taken it in the factory?

A Before we left.

Q This particular name Maria, did you remember the name or was the name suggested to you by the Government?

A It wasn't suggested to me.

Q You are concerned that your testimony in this

courtroom would be the best possible, correct?

THE COURT: No, I won't permit that. That is just an argument asking for her opinion.

Q May I assume that you know why you are here?

THE COURT: I won't permit that either.

Q You knew you were being called as a Government witness?

THE COURT: I think we have had enough of this. Of course she knows. Let's go on.

Q When Harry spoke on the telephone, did he speak in English or Spanish?

A English.

Q You were in a Spanish neighborhood, were you not?

A Yes.

Q A lot of people speaking Spanish?

A Yes.

Q A lot of people speaking Spanish in the shoe store?

A A few.

Q Did you hear the name Maria used in the shoe store?

A No.

Q You are sure? Just "No" or do you want to think about it for a minute?

A Nobody else was involved in this transaction that was in the shoe store.

Q Someone allegedly went to their girl friend's?

A Yes.

Q To get cocaine, and the only knowledge that you possess is what you heard over the phone?

THE COURT: I won't permit that. That is just argument that you can make to the jury.

Q Did you ask any questions about where are you going, how long is it going to take you to get back with the cocaine?

A Most of my questions were directed to Harry.

Q Like what?

A Let's go already, I want to go home. I wanted to get home.

Q What did he answer.

A Just wait, you will be able to leave soon. See, he said he had already set out to get it so I had to wait for it now.

Q You were with Harry for about three and a half hours?

A Right.

Q When you arrived in Union City by bus did you assume that the cocaine was going to be right there?

A Yes, I did.

Q It wasn't?

A Right.

Q You waited about an hour?

A Maybe 45 minutes.

Q Then you assumed when you got to the Puma shoe store that it was going to be there?

A Right.

Q When did you give him the $250?

A I gave it to him on the way up the stairs to the first place that we went.

Q Did he give you a receipt?

A No.

Q Was it all cash?

A Yes.

Q Where did you get the $250?

A The bank.

Q Your account or your husband's account?

MR. BUCHWALD: Objection.

THE COURT: It makes no bit of difference in the world where she got it.

Q How did you accumulate that $250?

MR. BUCHWALD: Objection.

THE COURT: That makes no difference either.

Q Were you selling drugs?

MR. BUCHWALD: That doesn't make any difference either, unless you can prove that she has been convicted.

Q How did you leave Union City?

A In a car.

Q Who drove the car?

A Candy.

Q Who?

A Candy.

Q What kind of car?

A I think it was an old station wagon or a station wagon.

Q Where was Harry?

A He was there too. The three of us left together.

Q How did you get back to New York?

A Harry drove me back.

Q Harry drove you back to New York?

A Right.

Q Who was in the car with you when you got to New York?

A Just Harry.

Q What happened to Candy?

A I don't know what happened to him. He just left, I guess, or he stayed there. We left.

Q He left, somewhere along the line he was dropped in the street?

A No, Harry and I left. I don't know what he did.

Q Just moments ago you said that Candy drove you in the car.

A From the first factory to the second retail shoe store.

Q Then Candy got out?

A Pardon?

Q Then Candy got out?

A The three of us got out together.

Q And then when you got back into the car it was just you and Harry?

A It wasn't the same car we got back into.

Q What kind of car did you get back into?

A A small American compact car that Harry was using.

Q Where did Harry take you?

A He dropped me off in midtown some place.

Q How did you first find out that you could purchase cocaine?

MR. BUCHWALD: Objection.

MR. WILLIS: I am not finished.

THE COURT: I will permit it, go ahead.

Q From 1411 Broadway?

A Mike told me on the phone.

Q When you spoke to Mike on the phone were you sniffing cocaine?

A No.

Q Has there been any time when you had a conversation with Michael Lorber that you were high or were using cocaine?

A Maybe after I got back to New York, after being in New Jersey I called him up to thank him for getting it for me.

Q You say maybe, are you sure?

A Yes, I am sure.

Q You are sure that you were using it then?

A I used it that afternoon, so I don't know whether you call it that I was using it then or not.

Q You had used it the afternoon that you came back from New York?

A New Jersey.

Q That afternoon?

A We all did it together. I already testified to that.

Q The afternoon before you went to New Jersey to get the cocaine you used drugs?

A No, the afternoon after the three of us were in the back room and we sniffed it together, that is when I used it.

Q When were you in the back room, the three of you?

A The back room.

Q When you first had the cocaine delivered to you? Let's backtrack. I am sorry if I am confusing you.

Before you received the cocaine in Union City, had you used it that afternoon?

A I told you, I am not sure. I don't remember. I might have.

Q You mean you might have used drugs that afternoon?

A In the first place that we went to, that Harry and I went to.

Q The first place that you and Harry went to was the place in Union City?

A Right.

Q When you use drugs you said to me you get a period of euphoria for about twenty minutes, correct?

A It is not always the same, but I would say that is essentially correct.

Q That period of euphoria, can you think clearly?

A I think so, yes.

Q Can you perform normal acts that you can do while you are not on cocaine?

A Yes.

Q Is your memory as strong?

A It depends.

Q Is it possible that when you claim you heard Harry say "Candy is at his girl friend Maria's getting cocaine," that you in fact may have been in a state of euphoria?

THE COURT: I won't permit that question. Let's go on. You can argue that to the jury.

Q You got back to New York at approximately what, 6:30, seven o'clock?

A Somewhere around then, yes.

Q Where were you dropped off?

A Somewhere in midtown.

Q After you purchased this cocaine, $250 worth, did you consume it?

A Yes.

Q Did you have any contact with Harry Shapiro thereafter?

A By telephone, but I never saw him every day.

Q How long did your telephone conversations go on?

A To Harry?

Q To Harry.

A I don't know, we spoke maybe three times.

Q About purchasing cocaine?

A No. Just spoke.

Q Were you and Harry dating?

A No. We were just friends.

Q Just friends?

A Yes.

Q You had purchased cocaine from him?

A Yes.

Q You had met him a short period before that, correct?

A Yes.

Q You bought $250 worth of cocaine, spoke to him three times on the phone, didn't see him thereafter, but he was your friend?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q What was your friendship with Harry based upon, drugs?

THE COURT: That is a ridiculous question. Let's go on.

Ask her what happened, what was

done.

Q This friendship that you developed with Harry --

THE COURT: The idea about arguing with her about the friendship and what she means by the word and so forth, that we won't have. We have had enough of it. Let's go on.

MR. WILLIS: May we have a brief recess?

MR. STONE: Can we recess for the day?

THE COURT: You have some cross examination?

MR. STONE: I wouldn't want to start it, even if Mr. Willis is through.

THE COURT: I guess, Miss Marcus, we can't finish with you this afternoon. Perhaps we better stop, and we will have to ask you to come tomorrow morning at 9:30.

Madam Foreman, and ladies and gentlemen of the jury, please bear in mind that my instructions are not to discuss the case among yourselves or anybody else. You are excused and we will meet here tomorrow morning at 9:30. Thank you very much.

(The jury left the courtroom.)

THE COURT: For planning purposes, Mr. Buchwald, when will we finish the Government's case?

MR. BUCHWALD: Judging by the length of cross

examination with this witness, I would think it unlikely that we will complete tomorrow. We will probably complete it Friday morning.

THE COURT: Mr. Stone, how long a case do you think you will have?

MR. STONE: I would doubt more than two hours. I think that is an outside top number, an hour more likely.

THE COURT: Mr. Willis, what about you?

MR. WILLIS: As long as it takes to argue a motion for acquittal.

THE COURT: All right.

It looks then as though we probably will not go to the jury until Monday, wouldn't you say? Because we don't sit Friday afternoon. First, I don't like to give a case to the jury Friday afternoon, and certainly not Friday afternoon. But certainly Friday afternoon I hear my motions.

MR. BUCHWALD: That would be my best guess, your Honor.

THE COURT: In order to go to the jury Friday morning we would have to complete everything tomorrow, and while I am anxious to do so, I don't want to crowd counsel, and I won't. I will give you whatever reasonable amount of time you require.

Suppose we start in at 9:30 tomorrow morning, and we will see how we go.

(Trial adjourned to December 6, 1973, at 9:30 a.m.)

UNITED STATES OF AMERICA
v.
CANDIDO MAYET and
MARIE AGUILAR a/k/a MARIA

73 Cr. 702

New York
December 6, 1973
9:30 a.m.

Trial resumed.

(In open court; jury not present.)

THE COURT: Do we have a witness?

MR. WILLIS: I don't think Maria Aguilar has arrived yet. I just walked in this second. I just want to check outside. May I sneak into the men's room for a second?

THE COURT: Of course.

MR. WILLIS: Thank you, Judge.

(In open court; jury present.)

THE COURT: Members of the jury, for planning purposes, I think it likely that we will finish this case by next Monday. I doubt if we can finish it before Monday. In any event, tomorrow, Friday, we will sit until 1 o'clock and then I will excuse the jury. I have to save Friday afternoons to deal with several matters, motions and other things that require my attention, so I don't usually have a court session on Friday afternoon.

Mr. Clerk, will you get the witness, please.

S U S A N M A R C U S , previously sworn, resumed the

stand.

MR. WILLIS: Let the record reflect that the defendant, Maria Aguilar, has not arrived in court.

THE COURT: I understand.

CROSS-EXAMINATION (continued)

BY MR. WILLIS:

Q Mrs. Marcus, between the time you left the courtroom yesterday afternoon and your arrival this morning have you had an opportunity to reflect upon the questions that were asked of you by myself?

A Yes, I suppose so.

Q After you relected upon those questions, are there any changes that you wish to make or any corrections?

A No.

MR. WILLIS: Thank you very much. That is all, your Honor.

THE COURT: Mr. Stone.

CROSS-EXAMINATION BY

MR. STONE:

Q Mrs. Marcus, have we ever met before?

A No.

Q When for the first time did you talk to any government agent or attorney concerning this case?

A I would say it was about three and a half weeks

ago my attorney spoke to them.

Q I am referring to you personally.

A Last week.

Q That was the first time?

A That I spoke directly, yes.

Q Did you receive any official paper from the Government before you engaged an attorney?

A No.

Q Did the Government call you up?

A Yes.

Q Was that an agent or a United States attorney?

A An agent.

Q In that conversation did you discuss anything with the agent?

A He told me that he had --

Q Please answer yes or no.

A What do you mean? I don't understand.

Q Did you have a discussion with him?

THE COURT: Ask what he said and what she said. Don't ask a characterization.

MR. STONE: I asked if they had a conversation.

THE COURT: You must have said one or two words.

Q Was that on the phone or in person?

A First I talked to him on the telephone and the

next day, when I came down in person, my attorney spoke. I didn't.

Q So the only conversation you had with the agent was on the telephone; is that right?

A Yes.

Q What did he say to you and what did you say to him?

A He said that he had some information about a sale that I was alleged to have made in New Jersey and that he would like to speak to me.

Q Did he mention any names to you?

A Yes, he did. He mentioned one name. I said what was it about or something, and he said he really didn't want to talk about any names, but he mentioned Mike Weiner or Mike Lorber.

Q Was that the only name he mentioned?

A Yes. I said I was very nervous about the whole thing, and he said I should get an attorney.

Q At any time during your discussions with an agent or a United States attorney --

THE COURT: Mr Reporter, would you make a note that Miss Aguilar has joined us now.

Q Did you sign any written statement?

A No.

Q At any time during your discussions with the agents

or the United States attorney did you see them take any notes?

A No.

Q Whatever you told them, then, was based on your independent recollection; is that correct?

A Yes.

Q You testified that you had been using cocaine for approximately two years; is that correct?

A Yes.

Q And you had purchased cocaine for your own use on many occasions; is that correct?

A No, not on many occasions.

Q How many?

A Six or eight.

Q Over a two-year period?

A Yes.

Q Did any federal agent ask you who you purchased it from during these six or eight occasions?

A No.

Q You knew that the posession of cocaine was a violation of the law, did you not?

A Yes, I did.

Q And any time before the federal government called you, did you ever go to any authorities to advise them of certain violations?

A No.

Q Your husband is a physician; is that correct?

A Yes.

Q Does he have a narcotic license?

A Yes.

Q Is that narcotic license, as far as you know, supervised by the Federal Bureau of Narcotics?

A Yes.

Q Those are the same agents that questioned you; is that correct?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q The agents that questioned you, did they tell you what agency they were from?

A They identified themselves. I don't remember the exact words they used.

Q Were they aware that your husband was a physician?

A Yes.

MR. BUCHWALD: Objection.

THE COURT: She says they were. That is enough about the husband.

Q Did they mention your husband's narcotic license?

A No.

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Did any of the agents at any time after that conversation take you in to New Jersey for the purpose of identifying any places or locations?

A No.

Q Did any of the agents mention the names of any places or locations to you?

A I never spoke directly to the agents. My attorney did.

Q Did your attorney mention any names or locations to you?

MR. BUCHWALD: Objection as to form, your Honor.

THE COURT: I will permit it.

A He mentioned names. He showed me the indictment.

Q When he showed you the indictment, that was the first time you saw those names; is that correct?

A The first time I had ever seen them in writing, yes.

Q Did he show you any pictures?

A No.

Q Did anybody show you any pictures?

A No.

Q Did anybody ever ask you for a description of any of the people involved in this alleged transaction?

A No.

Q Did you ever give them a description?

A No.

Q You speak Spanish?

A No.

Q Did you mention Puma Shoe Store to the agents, or did your attorney mention Puma Shoe Store to you?

A I mentioned it to the attorney and to my attorney as well.

Q And you remembered that name?

A Yes.

Q And you remember the name of Fiesta Shoe Factory?

A Right.

Q Did you talk to Harry Shapiro before you talked to your lawyer or the agents.

A He had called me on the telephone.

Q Did he discuss those names with you?

A No.

Q Did Michael Lorber ever discuss those names with you?

A No.

Q When did you first meet Michael Lorber?

A That was the first day, the day I went to his showroom.

Q How many times before that had you talked to him

on the telephone?

A Two or three.

Q On those two or three occasions did you discuss cocaine with him?

A Yes.

Q Who brought up the subject first?

A He did.

Q On all three of the occasions he was the one that brought the subject up first?

A I'm not sure we spoke about it on all three occasions but we did speak about it.

Q Go back to the first occasion, can you tell us when that was?

A It was during the week before the day that I went to his showroom, during that week.

Q Did you discuss cocaine with him?

A Yes.

Q Who mentioned it first?

A I just said that he did.

Q And on the second occasion who mentioned cocaine, if it was mentioned?

A I am not sure. I may have. I may have. I really don't know.

Q You're really not sure?

A No.

Q When he mentioned it the first time, did he offer to get cocaine for you?

A Yes. He didn't just bring up cocaine and said, I can get you some. I responded to him when he brought it up, and then he offered to get me some.

Q Where were you working at that time?

A I wasn't working.

Q You said it was late spring?

A Yes.

Q When did you take your summer house?

A In the spring.

Q Approximately what month?

A May and June.

Q Was it late May? That is, that you took it?

A Yes.

Q Did you eventually move out to the summer house?

A I was there frequently during the summer, half in the city and half out there.

Q When you say this meeting took place in late May, was it near Memorial Day?

A I don't remember when it was.

Q Was it near any holiday that you can remember?

A No, I can't remember.

Q Could you tell us the weather that day?

A It was warm.

Q Did you wear a coat?

A I did wear a coat, but I took it off because it was warm.

Q When you went to New Jersey, that would be late May or early June; is that correct?

A I said I really don't remember. It could be late June. It was May or June.

Q Would you describe Michael Lorber for us?

A I would say he is medium height, medium build, dark hair, dark eyes.

Q How heavy would he be?

A I really wouldn't know.

Q How tall?

A Six feet maybe. He is tall.

Q He is tall now?

A Yes, I think he is tall.

Q In judging a person's height, you would judge him on the basis of being next to them or looking at them, would you not?

A Correct.

Q Would you say he is taller than you are?

A Yes.

Q Very much taller?

A I don't know. I don't really remember.

Q You saw him for what period of time?

A A half hour, maybe 20 minutes.

Q That is the only time you saw him?

A Yes.

Q How many total phone calls did you have with him in your life?

A Eight or nine maybe. I really don't know.

Q Where did you call him?

A At his showroom or at his house.

Q And you had both numbers?

A Right.

Q After you came back from New Jersey, did you call him?

A Yes.

Q Where?

A I think I called him at home.

Q Do you remember what time it was?

A Yes. It was 7:30, 8. I don't remember the time.

Q In the evening?

A Yes.

Q Was it dark out?

A By the time I got home it was dark, yes.

Q And you called him after you got home?

A Yes.

Q And you had a discussion with him?

A Yes.

Q Did you mention names to him?

A No.

Q Did you describe where you went?

A No. I said I went to New Jersey but he already knew that.

Q You didn't tell him what type of store you had been in, did you?

A No, I did not.

Q And you were in a shoe store; is that correct?

A Yes.

Q And a shoe factory?

A Yes.

Q You do shopping, do you not?

A Yes.

Q You shop for clothes, you are interested in fashion?

A Yes.

Q What is a boutique?

A It is a store that sells clothes.

Q Were you in a boutique that day?

A I was in a shoe store.

Q Which is different than a boutique; is that correct?

A I would say so, yes.

Q And you never used the word "boutique" to Michael Lorber, did you.

A No.

Q How many people were in the shoe factory when you went there?

A Counting three other people besides myself.

Q In the factory?

A Yes. Then I think two people came in and left.

Q Was there a machine working in the factory?

A No. Maybe.

Q There could have been ten or 15 people working there?

A No, there weren't that many people.

Q In the shoe store, how many people were working?

A There was one person working and there were customers that came in and out.

Q Did you look at any shoes while you were there?

A I looked at them.

Q Did you try them on?

A No.

Q You just held them in your hands?

A I am not sure I held them in my hands. I just

looked at them.

Q And you gave the money to Harry in the stairs of the factory; is that correct?

A Yes.

Q Did he count it?

A I think so.

Q Do you remember what denomination bills you gave him?

A I don't remember, no.

Q In your discussions with anybody else in the factory, was it always in English?

A I didn't talk to people very much there at all.

Q Did you talk to anyone besides Harry?

A I said hello to Candy, and --

Q That is all?

A Small talk.

Q That is all he said to you, hello?

A Light, small talk.

Q That was the total conversation you had with Candy from the time you walked in until the time you went back to New York?

A We talked in the car but -- we just talked.

Q That is all?

A Yes.

Q You made no mention of the money that Harry gave you?

A No.

Q Candy spoke English?

A Yes. He spoke both.

Q And he spoke English to you?

A That is right.

Q You understood him?

A Yes.

Q Did he have an accent?

A Yes.

Q Were there some words he couldn't speak; is that right?

A I don't know. We didn't speak that much.

Q Did Harry ever talk Spanish to Candy?

A I don't remember. I don't think so.

Q Of course, you stood next to Candy, did you not?

A Did I stand next to him?

Q At one time or another in this encounter.

A Yes.

Q Could you tell us how tall he is?

A Shorter than I am.

Q How tall are you?

A Five foot eight.

Q You are five foot eight?

A With high heels he was shorter than I was.

Q In other words, if you are five foot eight normally --

A I would say he is shorter than five foot eight normally.

Q He is considerably shorter than Michael Lorber; is that correct?

A Yes.

Q How much would Candy weigh?

A I wouldn't know.

Q Judging from your weight, or your husband's weight, what would you estimate his weight to have been on that day in Jersey?

MR. BUCHWALD: Objection.

THE COURT: Sustained. She says she doesn't know.

Q Much lighter than Michael Lorber; is that correct?

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

A Yes.

Q Did he have any distinguishing features that you noticed on that day?

A No.

Q Did Michael Lorber call you and discuss this case

with you at any time?

A No.

Q When did you last talk to Michael Lorber?

A That day was the last time I ever talked to him.

Q You said you talked to him eight or nine times?

A I am not absolutely sure of the number.

Q And you told us you had three phone calls with him before that day?

A I said I thought so. Now that I think about it, I think I probably had more than that.

Q All those eight or nine calls were before that day or on that day?

A To the best of my recollection, yes.

Q And after that day you never called Michael Lorber?

A No.

Q In your travels in the cocaine-seeking world, did you have any trouble finding cocaine?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Did you have any discussions with Harry whether it was good cocaine or bad cocaine?

A Yes.

Q He told you it was good?

A He -- yes.

Q Did you ask him in advance how much cocaine you were going to get for your money?

A No, because Mike had arranged it.

Q So you never discussed the amount of cocaine with Harry; is that correct?

A Right.

Q But you only asked him whether it was good or bad?

A I didn't say I asked him; he told me.

Q You didn't even ask him?

A I assumed that it was.

Q Did you discuss this case between yesterday and today with your lawyer?

A Briefly in the taxi over here.

Q You left with him last night?

A Yes. We talked about it.

Q And you came with him this morning?

A Right.

Q And he is sitting in court now?

A Yes.

Q That is Mr. Baer?

A Yes.

Q Can you remember what Candy was wearing that day?

A No.

Q Mrs. Marcus, would you come down from the witness

stand and, Mr. Mayet, would you walk over there, please.

THE COURT: No, we won't do that.

Q How much shorter is Mr. Mayet than you?

MR. BUCHWALD: Objection, asked and answered.

THE COURT: I will permit it.

A I am not sure. I just know he is shorter than I.

Q Two, three inches?

A I really don't know.

MR. BUCHWALD: Objection.

THE COURT: We have had enough of this. She says she doesn't know.

Q How long did you see him on that day?

A I don't know, 45 minutes the first place we went to and maybe 15 or 20 minutes.

Q About an hour total?

A If that.

Q And that was sometime in late May or early June, and you haven't seen him since?

A No.

Q And you haven't seen a photgraph of him?

A No.

Q And you never picked him out of a group of people?

A No.

Q . And when you came to court you knew a person named

Candido Mayet was on trial?

A Yes.

Q And you knew he was of Cuban extraction?

A Yes.

Q And you looked at this table and saw one person of Cuban extraction; is that right?

A Right.

Q And you picked him out, is that correct?

A Right.

MR. STONE: No further questions.

THE COURT: Anything else?

MR. BUCHWALD: One second, your Honor.

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mrs. Marcus, had you discussed with Michael Lorber the amount of cocaine?

A Yes.

Q How much of cocaine was that.

A A quarter of an ounce.

Q And you have called Michael Lorber that evening after the purchase?

A Yes.

Q Why did you call him?

A To thank.

Q To thank him for what?

A For arranging it.

Q For arranging what?

A To arranging it so I could buy the cocaine.

Q You told him you bought cocaine?

A Yes.

Q In Jersey?

A He knew I went to New Jersey, yes.

MR. BUCHWALD: I have no further questions.

THE COURT: Anything else?

MR. WILLIS: No further questions.

MR. STOLL: I have nothing else.

THE COURT: Thank you, you may be excused.

(Witness excused.)

MR. BUCHWALD: The Government would call Mr. Harry Shapiro.

H A R R Y S H A P I R O , called as a witness for the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

MR. BUCHWALD: May I proceed, your Honor?

THE COURT: You may.

Q Mr. Shapiro, are you the Harry Shapiro named as a defendant in the indictment in this case?

A Yes.

Q Have you previously entered a plea in the case?

A Yes.

Q What was that plea?

A Guilty.

Q Have you been sentenced as of yet?

A No.

Q When are you to be sentenced?

A The 14th of December.

Q 1973?

A Right.

Q Have any promises been made to you in connection with your testimony this morning?

A None.

Q Has any member of the United States attorney's office indicated that any statements would be made by the Government as a result of your testimony this morning?

A Yes.

Q What statements are those?

A They just said they would tell the judge I cooperated.

Q When did they indicate that they would tell the judge that?

A When I was talking to you.

Q At what time were they to tell the judge that?

A When my sentencing came up.

Q On the date of your sentencing?

A Yes.

Q Mr. Shapiro, I direct your attention to the spring and early summer of 1973. By whom were you employed at that time?

A Fiesta Shoes.

Q Where is Fiesta Shoes located?

A It was located in Union City, 311 Mountain Road.

Q Keep your voice up so that all the ladies and gentlemen of the jury can hear you.

When did you start working there?

A In the fall of '72.

Q What kind of work did you do at Fiesta Shoes?

A I was a salesman.

Q Who did you work for?

A Candy Mayet.

Q Do you see Mr. Mayet in the courtroom today?

A Yes.

Q Would you point to him, please.

A Right there.

MR. BUCHWALD: Let the record reflect that the witness has identified the defendant, Candy Mayet.

THE COURT: Yes.

Q You referred to him as what? What was the first name?

A Candy.

Q Is that the name you called him?

A Yes, sir.

THE COURT: Mr. Shapiro, this is a great big room and I am sure you are not accustomed to speaking in a loud voice, but you will have to try to speak up, because we want the farthest jurors to be able to hear you.

Q During the period of your employment at Fiesta, how frequently did you see Candido Mayet?

A About every day.

Q Did Candido Mayet, to your knowledge, own another business establishment in Jersey?

A Yes.

Q What was that?

A Puma Shoes.

Q What kind of store was that?

A Shoe store.

Q Was that a retail store or was that a factory?

A Retail.

Q Where is that located?

A Bergenline Avenue in North Bergen.

Q Bergenline Avenue?

A Yes, North Bergen.

THE COURT: What is the name of the town?

THE WITNESS: North Bergen.

Q That is in New Jersey?

A Yes.

Q In addition to your working in the shoe business for Mr. Mayet, did you ever have occasion to enter into any other business arrangements with Mr. Mayet?

A Yes.

Q What was the nature of those arrangements?

A Cocaine.

Q When did you enter into these arrangements?

A May of '73.

Q Where did this occur?

A I don't understand the question. Where we talked about it, you mean?

Q Did you have discussions with Mr. Mayet?

A Yes.

Q Concerning these arrangements?

A Yes.

Q Where was the first such discussion?

A In the factory.

Q What did he say to you and what did you say to him

on this occasion?

A He told me if I wanted to know anybody to buy cocaine, I could --

THE COURT: Mr. Shapiro, I am having difficulty hearing you. I am terribly sorry, but I think you will have to speak in a loud voice. It may be hard but I can't hear you.

Mr. Reporter, did you get the last answer?

Finish your answer.

THE WITNESS: I would let him know and I would make the profit on it.

THE COURT: And you would make the profit on it?

THE WITNESS: Right.

Q What did you say to him?

A I said all right.

Q Would you please speak up.

A I said okay.

Q Was there any discussion at this time concerning the amount of cocaine?

A It was a weight amount, like, you know, up to a couple of kilos, I guess.

Q What does the term "weight amount" mean? What did it mean to you?

A Like at least a quarter of an ounce.

THE COURT: Did I understand you to say, from a quarter of an ounce up to two kilos?

THE WITNESS: Yes.

THE COURT: All right.

Q After you had this conversation with Candy Mayet what, if anything, did you do?

A I said okay.

Q Did you tell anybody else about the conversation?

A Yes.

Q Who was that?

A Bob Kelly.

Q Mr. Shapiro, at this time where were you living?

A 5601 Boulevard East.

Q Where is that located?

A West New York, New Jersey.

Q In New Jersey?

A Yes.

Q Who were you living with?

A Two girls and Bob Kelly.

Q Bob Kelly was one of your roommates?

A Yes.

Q He shared the apartment?

A Yes.

Q And you spoke to Bobby Kelly about what?

A About the coke.

Q What did you say to him and what did he say to you?

A I told him if he knew anybody who wanted to buy any coke, to let me know and I would tell Candy and we would split the profit.

Q Who would split the profit?

A Bobby and myself.

Q At that time, to your knowledge, did Bobby Kelly know Candy Mayet?

A Yes.

Q That was through you?

A Yes.

Q Did Bobby Kelly work in the showroom?

A No.

THE COURT: What did he do?

THE WITNESS: Who?

THE COURT: Kelly.

THE WITNESS: He was a salesman, too.

THE COURT: He was a salesman?

THE WITNESS: He didn't work in the store.

THE COURT: For whom did he work?

THE WITNESS: At the time?

THE COURT: Yes.

THE WITNESS: Some clothes company.

THE COURT: A clothes company in New York City?

THE WITNESS: Yes.

MR. WILLIS: He is a big boy, can he speak loud?

THE COURT: He said he worked for a clothes company in New York, as I understand him.

Go ahead.

Q When did you have this discussion with Bobby Kelly in relation to the discussion with Candy Mayet that you testified about?

A Sometime during that week, at the apartment.

Q What did Bobby Kelly say to you on this occasion?

A He said okay, he would let me know.

Q And sometime after that discussion did you have another discussion with Bobby Kelly concerning the same subject?

A Yes.

Q What was said on this occasion?

A He told me he knew somebody in New York who would be interested in buying an ounce or possibly a couple of ounces.

Q Did he say who this person was?

A Not at the time, no.

Q Did he describe this person at all, or where the person worked?

A He said he owned a showroom in New York.

Q After that, did you have further discussions with Bobby Kelly?

A Yes.

Q What did you say to him and what did he say to you in those discussions?

A He told me that this guy, Mike Molina --

Q What is the name?

A Mike Molina.

Q What did he say about Mike Molina?

A He told me about Mike Molina wanted to buy an ounce of coke, and he said he had a partner with him involved. He would want to taste it, and he wanted to know the price.

Q Was this Mike Molina connected to the showroom, according to Bobby?

A Yes, it was his showroom.

Q After Bobby Kelly told you this, did you have any discussions with Candy Mayet?

A I told him about it and he said okay, when it's for sure to let me know.

Q Keep your voice up, please, Mr. Shapiro.

THE COURT: What did he say?

THE WITNESS: When it's definitely arranged, to let him know.

THE COURT: To let Mayet know, when it's definitely arranged?

THE WITNESS: Yes.

Q After this did you have further discussions with Bobby Kelly concerning Mike and the showroom?

A Yes.

Q Were there any discussions about supplying prices?

A Yes. He asked me about what the prices would be, so I wrote up a little price list about what I thought it would be.

Q What did you do with this price list?

A I gave it to Bobby Kelly.

Q What did Bobby Kelly say he was going to do with the price list?

A He said he was going to give it to Mike.

Q I show you what has previously been marked as Government Exhibit 2 for identification and ask you if you can identify that item?

A Yes.

Q What is that item?

A It's the price list I wrote.

THE COURT: It's never been received in evidence?

MR. BUCHWALD: It has been received in error.

THE COURT: Why do you call it 2 for identification?

MR. BUCHWALD: My error.

Q I refer your attention to the back of Government Exhibit 2 and ask you if you recognize the number written there?

A Yes, I do.

Q What number is that?

A It's the number of the apartment we were at.

THE COURT: The apartment at West New York where you lived with Kelly?

THE WITNESS: Yes.

Q Is that the telephone number?

A Yes.

Q I have again been requested by one of the jurors to ask you to speak up. Would you please speak up.

Did you ever have any discussion with Bobby Kelly concerning a sample of cocaine?

A Yes.

Q What was said on this occasion? What did he say to you and what did you say to him?

A I told him I would get a sample off Candy and give it to him, and he could give it to Mike.

Q What did Bobby say? Why did you tell Bobby that?

MR. STONE: Objection.

THE COURT: Yes. You can ask him what the

conversation was between him and Kelly.

Q Had Bobby said anything to you before you made that statement to him?

A Yes. He told me he wanted a taste of the coke for Mike.

Q Did he say why he wanted it?

A He just told me he wanted to give it to Mike.

Q Did you ever give Bobby Kelly a sample or a taste of cocaine?

A Yes.

Q Where did that occur?

A That occurred at the apartment at Boulevard East.

Q This is your apartment and Bobby Kelly's apartment?

A Yes.

Q Would you please tell the Court and the jury what happened on that occasion at your apartment?

A Bobby, myself and the two girls were at the apartment one evening. It was in June.

Q Of 1973?

A Yes. Candy came over with two friends.

Q Candy came over?

A With two friends. He said he wanted to talk to me about the shoes or something.

Q About shoes?

A Yes.

Q Then what happened?

A He wanted to talk alone so we went into the bedroom, and he had some cocaine.

Q Who was in the bedroom?

A Just me and Candy. He asked me if I had any tinfoil.

Q Would you please speak up.

THE COURT: Can you speak louder?

THE WITNESS: Yes. I have a cold, that is why.

THE COURT: Do we have a loudspeaker, Mr. Clerk? Let's try to get that.

THE WITNESS: He asked me for some tinfoil and I went and got the tinfoil and --

Q Where did you go to get the tinfoil?

A The kitchen.

Q Where did you go to the kitchen from? Where were you?

A In the bedroom.

Q Who else was in the bedroom at this time?

A Just me and Candy.

Q Then you went to the kitchen?

A Yes.

Q What did you do in the kitchen?

A I got the tinfoil.

Q Then what did you do?

A I went back to the bedroom.

Q Then what happened?

A Candy had the package of some cocaine and he made up a few packets.

Q How did he do that?

A He took it out of the bag and put it in a tinfoil.

Q Then what happened?

A He was a little short of money so he asked me if I had any money. I didn't have any money and I knew Bobby had money.

Q What happened to these packets you are talking about, where were they?

A They were on the bureau.

Q What, if anything, was done with the packets?

A Candy asked me if I could move any, sell them.

Q He asked you if you could sell any?

A Yes.

Q What did you say?

A I didn't have customers for them and he was going to charge me a commission on shoes for the coke.

Q What did he say to you and what did you say to him?

A He asked me if I had any money and I told him no, but I would get money off Bobby. I told him I couldn't move

the spoons.

Q What did you mean by the term "move the spoons"?

A Sell them.

Q What were you referring to, were there spoons there?

A Yes, on the bureau.

Q Actual spoons, tablespoons, teaspoons?

A The tinfoil packets of the coke, they are called spoons.

Q Those are called spoons?

A Yes.

Q And you said you couldn't move the spoons?

A Right.

Q That meant you couldn't sell the packets?

A Right.

Q What did he say?

A He said okay. I told him I needed the spoon for Bobby.

Q You needed one of the packets for Bobby?

MR. WILLIS: I object to Mr. Buchwald's leading questions.

THE COURT: He is having the hardest time of his life in getting responses from this witness. The objection is overruled.

Go ahead, Mr. Buchwald.

Q What happened after that?

A I called Bobby in the room.

Q Then what?

A I asked him for ten dollars.

Q Then what?

A Then I gave it to Candy and he gave me a packet for Bobby.

Q At some point that night did Candy Mayet leave your apartment?

A Yes.

Q What did you do with the packet of cocaine?

A I gave it to Bobby, Bobby Kelly.

Q Did you have any discussion with Bobby Kelly at that time?

A Yes, I told him this is the taste, to give it to Mike.

Q Up to that point in time, had you ever spoken either directly or on the telephone with the person you knew as Mike?

A Not up to that time, no.

Q Did there come a time when you finally did speak with Mike?

A Yes.

Q Was that on the phone or in person?

A It was on the phone.

Q The first time.

A On the phone.

Q On that occasion what did you say to Mike and what did he say to you?

A Bobby called him to see what --

MR. STONE: Objection.

THE COURT: On what ground?

MR. STONE: Unless he was present when Bobby made the call.

THE COURT: I assume he was.

Were you?

THE WITNESS: Yes.

THE COURT: He said he was.

A Bobby called him to ask him what he thought of it, the taste. And --

MR. WILLIS: I did not hear the last response.

(Answer read.)

A He spoke to him about a meeting he was supposed to have with Mike, so they had a little argument on the phone or something. He said, "Talk to Harry." I got on the phone and I talked to him and I asked him if he liked it, and he said yes. Then I told him, from now on to deal with just me.

Q To deal with you?

A Yes.

Q Who did you say this to?

A Mike.

Q Did you discuss anything else with Mike on that occasion?

A Yes, I told him I wanted to meet him, see who he was.

Q Was there any discussion as to amounts of cocaine?

A Yes, he said he would buy at least an ounce, maybe three ounces.

Q Was there any discussion as to the prices for cocaine?

A Yes.

Q What was that discussion?

A Well, on the price list I put down 900 for an ounce, and I told him the more he bought the cheaper it would be. We came to a conclusion that if he bought three ounces, it would be $750 for an ounce.

THE COURT: If he bought three ounces, it would be $750 an ounce; is that it?

THE WITNESS: Right.

THE COURT: All right.

Q Did there come a time after that that you went to

Mike's showroom?

A Yes.

Q Where was that showroom located?

A 1411 Broadway, Manhattan.

Q Was Mike there when you went to the showroom?

A Yes.

Q Was anyone else there?

A No.

Q At any time on that occasion, were you introduced to another person?

A Yes.

Q Who introduced you to that other person?

A Mike Molina.

Q Incidentally, Mr. Shapiro, you have had various discussions in this time period concerning cocaine; is that correct?

A Yes.

Q Did you always, in your discussions, use your correct last name?

A No.

Q You used other last names?

A Yes.

Q Who did Mike introduce you to on this occasion?

A Susan Marcus.

Q Had you ever met Susan Marcus before?

A No.

Q Did you have a discussion with Susan Marcus at that time in the showroom?

A Yes.

Q What did you say to her and what did she say to you?

A She said she wanted to buy some cocaine, a quarter of an ounce.

Q What did you say?

A I said okay, but I would have to go over to New Jersey to get it.

Q Then what, if anything, did you do?

A Then we left and we walked down to the Port Authority and we went over to New Jersey on a bus.

Q You took the bus from the Port Authority?

A Yes.

Q Where did the bus go?

A Palisades Avenue in Union City.

Q Where did you go from there?

A Then we walked up to the factory.

Q This is Fiesta?

A Yes.

Q How far is the factory from Palisades Avenue, the

bus stop in Union City?

A About a block, a block and a half.

Q Up to this point had you had any discussion with Susan Marcus concerning money?

A Yes.

Q Did she ever give you any money?

A Yes.

Q When was this?

A Going up the stairs to the factory.

Q The staircase of Fiesta Shoe Factory?

A Yes.

Q Then what happened?

A She gave me about 235, 240 dollars.

Q Then what happened?

A Then we went into the factory and I introduced her to Candy.

Q You introduced Susan Marcus to Candy Mayet?

A Right.

Q Then what happened?

A He said that he didn't have any cocaine there, he would have to go up to the store.

Q Candy Mayet told you this?

A Yes.

Q Then what happened?

A Then we left and went up to the store.

Q What store are you referring to?

A Puma.

Q Puma Shoe Store?

A Yes.

Q How did you get to the Puma Shoe Store?

A By car. Candy's car.

Q Who went?

A Candy, Susan and myself.

Q Who drove?

A Candy.

Q Do you recall what kind of car it was?

A Excuse me?

Q Do you recall what kind of car it was?

A A station wagon.

Q Then you arrived at the Puma Shoe Store?

A Yes.

Q What happened at the Puma Shoe Store?

A Candy said that he would have to go to Maria's again.

Q Candy said that to who?

A To me.

THE COURT: He said he would have to go where to get it?

THE WITNESS: Maria's.

THE COURT: To Maria's to get it?

THE WITNESS: Yes.

Q Do you know who Candy was referring to?

A Yes.

Q Had you met this person before?

A Yes.

Q Had you spoken with her before?

A Yes.

Q Had you ever seen this person at the shoe store before?

A Yes.

Q Do you see her in the courtroom today?

A Yes.

Q Would you point to her, please.

A Right there.

MR. BUCHWALD: Let the record reflect that Mr. Shapiro has identified Marie Aguilar.

THE COURT: All right.

Q Then what happened after Candy said this?

A He left.

Q Candy left Puma?

A Yes.

Q What happened after he left?

A We just waited for him to come back.

Q Did he eventually come back?

A Yes.

Q About how long was this?

A About an hour, an hour and a half, an hour and fifteen minutes.

Q During this period of time, did Susan Marcus say anything to you?

A Yes, she was worried about where he went. Why it took so long. She said she had to go home.

Q During this period of time, did you make any telephone calls?

A Yes.

Q Who did you call?

A I called another store because I thought he was there.

Q What store?

A O'Maras.

Q Why did you call the store?

MR. STONE: Objection.

THE COURT: Sustained.

Q Do you know where Marie Aguilar lives?

MR. WILLIS: Objection.

THE COURT: Overruled.

MR. WILLIS: When, Judge?

THE COURT: At the time in question, June 1973, I assume.

MR. BUCHWALD: That is correct, your Honor.

A I knew the building.

Q Do you know how far that was from the Puma Shoe Store?

A Approximately.

Q Do you know how long it would normally take to drive from the Puma Shoe Store?

MR. WILLIS: Objection.

THE COURT: Overruled.

Q To Marie Aguilar's apartment?

A About 15, 20 minutes.

Q When you called O'Maras, do you know who you spoke with?

A No.

Q What did you say?

MR. STONE: Objection.

THE COURT: This is a conversation at O'Maras?

MR. BUCHWALD: Yes.

THE COURT: I will permit it.

A I asked if Candy was there.

Q How much after that telephone call, if you recall, how long after that telephone call did Candy return to Puma?

A About a half hour.

THE COURT: About half an hour?

THE WITNESS: Yes.

THE COURT: Keep your voice up, please, Mr. Shapiro.

Q What happened when Candy returned to Puma?

A I gave Suzie the package.

Q Excuse me?

A I gave Suzie the coke.

Q Where did this occur?

THE COURT: Who gave Susan the package?

THE WITNESS: He did.

THE COURT: Candy gave Susan the package?

THE WITNESS: Yes.

Q Where did this take place?

A In the store, Puma.

Q Did it take place in the front of the store as you walk in?

A No, in the back part.

Q There was a back room in the store?

A Yes, a small room.

Q Who was in the back room at this time?

A Susan, Candy and myself.

Q After Susan Marcus got the package, what, if anything, happened?

A She opened it up.

Q She opened the package?

A Yes.

Q Then what happened, if anything?

A We all sniffed some.

Q Who do you mean by "we all"?

A Candy, myself and Susan.

Q Then what happened?

A That was it. She said she had to go home, so I took her home.

Q You took her home?

A I drove back to New York because I had to go back to New York.

Q Did you take her back to Mike's showroom?

A No, to the Port Authority.

Q Let's get back to Mike. As of this point in time, the day that you went with Susan Marcus to New Jersey -- withdrawn.

Prior to this, in your discussions with Mike concerning cocaine, had Mike indicated to you that he was going to buy cocaine?

A He said him and his partner.

Q Would you please speak up.

A He told me him and his partner.

Q As of this day when you went with Susan Marcus to

New Jersey, had you ever met Mike's partner?

A No.

Q After this date that you went to New Jersey with Susan Marcus, did you ever speak with Mike's partner either on the telephone or person to person?

A On the telephone.

Q The first time was on the phone?

A Yes.

Q What name did Mike's partner use?

A Bruce.

Q On this occasion what did Bruce say to you and what did you say to him? Did he introduce himself?

A Yes.

Q What did he say?

A He said, "I am Bruce, Mike's friend, you wanted me to call you."

Q Did he say anything about Bobby Kelly?

A No.

Q What else?

A He said he was going to buy three ounces on the following Monday.

Q What did you say to him?

A I said, "Well, if you are going to definitely buy them, call me Sunday night."

Q Speak up.

A If he is definitely going to have the money and everything on Monday, to call me Sunday night.

Q Did there come a time, Mr. Shapiro, when you were arrested in this case?

A Yes.

Q Do you know what day that was?

A Yes.

Q What day was it?

A July 9, 1973

Q Was that a Monday, if you recall?

A Yes.

Q In relation to the time you were arrested, July 9, when did this phone call with Bruce take place?

A The previous Thursday or Friday.

Q And on that occasion you discussed a meeting with Bruce for Monday, July 9?

A Yes.

Q What did you say about that, a phone call?

A If he was definitely sure we were going to meet on Monday, he was to call me Sunday night.

Q On this conversation on Thursday night or Friday night preceeding the Monday on which you were arrested, did you have any discussion about where you would meet?

A Mike's showroom.

Q Did you have any discussion about the amount of cocaine?

A It was three ounces.

Q Did you discuss the price for the cocaine?

A 750 an ounce.

Q Did Bruce call you back that Sunday night?

A Yes.

Q And you spoke with him on the phone?

A Yes.

Q And on that occasion what did you say to him and what did he say to you?

A He said he would meet me around noon the following day at Mike's showroom, that I should bring the package and he would have the money.

THE COURT: You hadn't seen him up to this point?

THE WITNESS: No.

THE COURT: You had just spoken to him on the telephone?

THE WITNESS: Yes.

THE COURT: All right.

Q Mr. Shapiro, on July 9, 1973, would you relate to the Court and the jury what you did on that day.

A I went to the factory in the morning.

Q Then what happened?

A Candy wasn't there so I called the store up, and he wasn't there.

Q You say you went to the factory, and you are referring to Fiesta?

A Yes.

Q What store did you call?

A Puma.

Q And he wasn't there?

A No.

Q You asked for him?

A Yes.

Q Then what happened?

A Then I called his house and he wasn't there.

Q Then what happened?

A So I called the store back and there was some guy working there. I asked him if he would give me Maria's number and I would call her up.

Q Then what happened?

A He said he couldn't give me the number but that he would call her and tell her to call me back.

Q Then what happened?

A Then Maria called me back.

Q Where were you when you got this phone call?

A At the factory.

THE COURT: You say Maria telephoned you?

THE WITNESS: At the factory.

THE COURT: After you had talked to the man at the store?

THE WITNESS: Yes.

THE COURT: Who said he couldn't give you her number but she would call you back?

THE WITNESS: Right.

THE COURT: And she did call you back?

THE WITNESS: Yes.

Q When she called you back, what did you say to her and what did she say to you?

A I told her that I had to meet this guy in New York to sell three ounces of coke but I couldn't get in touch with Candy. But he knew about it and it would be all right if she had any coke, a couple of ounces, to meet me at the store. And I had to bring it to the guy in New York.

Q Did she say whether she had cocaine?

A Yes.

Q How much did she say she had?

A Four ounces.

THE COURT: How much?

THE WITNESS: Four ounces.

Q What did you say?

A I asked her to bring three to the store and meet me.

Q Did she say she would do that?

A Yes.

Q Then what happened?

A Then I went up to the store.

Q When you got to the store, and you are referring now to Puma?

A Yes.

Q You went from Fiesta to Puma; is that correct?

A Yes.

Q When you got to the store was Candido Mayet at the store?

A No.

Q Was Marie Aguilar at the store?

A No.

Q After you arrived what happened?

A I was there about ten minutes and Maria came and Candy came.

THE COURT: I am sorry, I can't hear you. Maria came and Candy came?

THE WITNESS: She came first and he came about three or four minutes after.

THE COURT: She came first and he came three or

four minutes afterwards?

THE WITNESS: Right.

THE COURT: They didn't come together?

THE WITNESS: No.

THE COURT: Again, try to keep your voice up.

Q Then what happened?

A He was a little upset because this guy at the store had called him.

Q Who was upset?

A Candy.

Q Did he say something?

A He told the guy at the store that he wasn't supposed to call up anybody from there.

Q Then what happened?

A They had a little argument or something, I don't know.

Q After that, what happened?

A Then Candy went into the back and talked to Maria.

Q Candy and Maria went into the back?

A Yes.

Q Is this the back room that you had been in with Susan Marcus and Candy Mayet on that other occasion?

A Yes.

Q Did you go with them?

A No.

Q After they were in the back room what happened?

THE COURT: I couldn't hear whether he said yes or no. Did you go with them?

THE WITNESS: No.

THE COURT: You did not go with them?

THE WITNESS: No.

THE COURT: You saw Candy and Maria go in the back room?

THE WITNESS: Yes.

THE COURT: All right, I understand.

Q Then what happened?

A Then they came out.

Q When they came out, what happened? Did you observe anything at that time?

A Yes.

Q What did you observe?

A Candy had like a plastic bag in his pocket.

Q Did you see the bag?

A Yes.

Q Did you see what was in the bag at that time?

A No.

Q Then what happened?

A I said I got to go over to New York to meet Bruce,

and Candy said the three of us would go.

Q Then what happened?

A We left. We got into the car.

Q You got into a car?

A Yes.

THE COURT: The three of you?

THE WITNESS: Yes.

THE COURT: You, Maria and Candy?

THE WITNESS: Yes.

Q Who drove?

A Candy.

Q When you got into the car, what happened?

A Candy put the package in a pocketbook.

Q Candy -- well, what package are you referring to?

A The one in his pocket.

Q The one you saw in his pocket?

A Yes.

Q He put it where?

A In a pocketbook.

THE COURT: In the pocketbook?

THE WITNESS: In a pocketbook.

THE COURT: Whose pocketbook?

THE WITNESS: Maria's

THE COURT: All right.

MR. BUCHWALD: Can we have this item marked as Government Exhibit 3 for identification?

(Government Exhibit 3 marked for identification.)

Q I now show you what has previously been marked as Government Exhibit 3 for identification and ask you if you can recognize this item?

A Yes, it's the purse.

Q Is this the pocketbook you referred to?

A Yes.

Q In the car, you said that Candy was driving; is that correct?

A Yes.

Q Where were you in the car?

A The back seat.

Q Where was Maria Aguilar?

A The front right-hand side.

Q Where was the pocketbook?

A In the front.

Q Where did you go in the car?

A To 1411 Broadway.

Q Excuse me?

A Mike's showroom.

THE COURT: Where?

THE WITNESS: 1411 Broadway.

Q In Manhattan?

A Yes.

Q Did you park the car anywhere?

A In a parking lot underneath.

Q Underneath 1411 Broadway?

A Yes.

Q Then what, if anything, did you do?

A We got out of the car and went upstairs to the showroom.

Q You say "we." Who got out of the car?

A Maria, Candy and myself.

THE COURT: Did Maria take her pocketbook?

THE WITNESS: Yes.

Q Then what, if anything, did you do?

A I went into the showroom alone.

Q What floor is the showroom on?

A I think the 17th.

Q From the parking lot -- you are down in the parking lot with Candido Mayet and Marie Aguilar; is that correct?

A Yes.

Q Where did you go from the parking lot? Where is the next place you went?

A To the showroom.

Q .How did you get to the 17th floor?

A We walked out and went through the building to the elevators and up to the 17th floor by elevator.

Q Was Maria Aguilar and Candido Mayet, were they in the elevator with you?

A Yes.

Q Did they get out on the 17th floor with you?

A Yes.

Q Where did you go after you got out of the 17th floor?

A To Mike's showroom.

Q Did Maria Aguilar or Candy Mayet go with you into Mike's showroom?

A No.

Q You went into Mike's showroom alone?

A Yes.

Q What happened in the showroom?

A Mike introduced me to Bruce.

Q Mike introduced you to Bruce? Was this the first time you met Bruce?

A Yes.

Q Then what, if anything, did you do.

A He said to me I was late because I was supposed to meet him at 12.

Q Then what happened?

A He said that his friend was downstairs.

Q Who said this?

A Bruce said his friend was downstairs in a coffee shop, he had the money with him.

Q Bruce told you that his, meaning Bruce's friend --

A His partner.

Q Was where?

A In the coffee shop downstairs. We had to go meet him.

Q Then what happened?

A We walked out to the elevators.

Q Bruce went with you?

A Yes.

Q When you got to the elevators -- these are the elevators on the 17th floor?

A Yes.

Q What happened?

A I introduced him to Candy.

Q You introduced to Candy Mayet?

A Yes.

Q Was Marie Aguilar there at the time?

A Yes.

Q Did you introduce Bruce to Marie Aguilar?

A No.

Q You didn't introduce her at all?

A No.

Q When you introduced Bruce to Candy Mayet, did you say, this is Candy Mayet?

A No.

Q What did you say?

A I said, "This is my friend, Candy."

THE COURT: What did you say? I can't hear you sitting here, Mr. Shapiro. Certainly the jurors can't hear you. Sitting right here I can't hear you.

THE WITNESS: I said, "This is Candy."

THE COURT: All right. I can hear that.

Q What did you do at this time, if anything?

A We went downstairs in the elevator.

Q Did you say why you were going back downstairs in the elevator?

A I told Candy we had to go over to the coffee shop.

Q Did you tell him why?

A To meet Bruce's partner.

Q Did you get into the elevator?

A Yes.

Q Who got into the elevator with you?

A Bruce, Candy, Maria and myself.

Q Did you go down in the elevator?

A Yes.

Q Where did you get out?

A The first floor.

Q Then what did you do?

A We went over to the coffee shop.

Q Who went to the coffee shop?

A The four of us.

Q What did you do when you got to the coffee shop?

A Bruce said his friend wasn't there, that he was nervous because he had $2500. He was afraid somebody was going to try to rob him.

Q Who did Bruce say was nervous?

A His partner.

Q He said his partner was nervous?

A Yes. He said he was probably walking around outside. We should sit down and have something to eat and he would look for him.

Q Where was this coffee shop in relation to 1411 Broadway?

A It's on 39th and Seventh Avenue.

Q How far is that?

A Half a block.

Q When you got to the coffee shop Bruce said his friend wasn't there?

A Right.

Q Who was present when Bruce said this?

A Candy and Maria and myself.

Q Then what happened when Bruce said this?

THE COURT: What had become of Maria?

THE WITNESS: I said Candy, Maria and myself.

THE COURT: Candy, Maria and you were there when Bruce said his friend wasn't there?

THE WITNESS: Yes.

Q Then what happened?

A He said he would go outside and look for his friend, who was probably walking around.

Q Bruce said this?

A Right.

Q What, if anything, did you do at this time?

A I said I would go with him.

Q Did you go with him?

A Yes.

Q Where did you go?

A We just walked around the block outside.

Q Did Maria Aguilar or Candido Mayet come with you on this occasion?

A No.

Q They stayed in the coffee shop?

A Yes.

Q You walked around outside in the street with Bruce?

A Yes.

Q What happened then?

A We couldn't find him.

Q You couldn't find Bruce's friend?

A Right.

Q Then what happened?

A He said he would give him a call. First we went back to the coffee shop.

Q You and Bruce went back to the coffee shop. Did you meet Marie Aguilar and Candido Mayet again?

A Yes.

Q How long had you been outside?

A Fifteen, twenty minutes.

Q You went back to the coffee shop?

A Yes.

Q What happened at the coffee shop?

A He said he would call his friend up on the phone.

Q Bruce said this?

A Yes.

Q Who was present when Bruce said this?

A Candy, Maria and myself.

Q Then what happened?

A Then they were having something to eat --

Q Please speak up.

A We finished up in the diner there and went outside.

Q Who is "we"? Who went outside?

A Candy, Maria and myself.

Q And Bruce?

A And Bruce.

Q What, if anything, did you do then?

A Candy and myself went across the street to the phones.

Q What about Maria?

A She stayed by the diner.

Q Outside the diner and didn't go across the street with you?

A No, I don't think so.

Q Where did you and Candy Mayet and Bruce go?

A Right across the street to the phones.

Q Public telephone?

A Yes.

Q What happened at the public telephone?

A Bruce called up his partner.

Q Bruce called the number on the phone?

A Yes.

Q Then what happened?

A He spoke to him for awhile and then he gave me the telephone to talk to his friend.

Q He put you on the phone?

A Yes.

Q And you now spoke to someone on the phone?

A Yes.

Q Did this other person give you a name?

A Yes.

Q What name was that?

A Greg.

Q Greg?

A Yes.

Q What did you say to Greg and what did he say to you?

A He said that he had been waiting for me but I was late and so he left. He was at work and he asked me if I had the package, and I said yes. He said he still wanted it and that he was going out on a coffee break from his job, that if I could come down near where he works, the Market Diner --

Q Where was that?

A The Market Diner. He would meet me and we would make the deal, and that would be it.

Q Then the phone conversation ended?

A Yes.

Q Did you tell him you were going to the Market Diner?

A Yes.

Q When the phone conversation ended, what, if anything, did you do?

A Bruce, Candy and myself got in the cab --

Q Before you got back in the cab, did you leave the phone booth?

A Yes. I told Candy we had to go to the Market Diner.

Q And at this time, while you had been in the phone booth, do you know where Marie Aguilar was?

A Across the street.

Q When you got out of the phone booth, who was with you, right when you got out of the phone booth?

A Just me, Candy and Bruce.

Q Did you, Candy and Bruce ever meet Marie Aguilar again?

A No, just Candy.

Q Candy did?

A Yes.

Q What happened?

A I don't know. I don't know. He just went and talked to her and she gave him the pocketbook and we left.

Q Candy went over to Maria?

A Yes.

Q Did you see what was going on?

A Yes, she gave him the pocketbook.

Q Could you hear what they were saying?

A No.

Q But you saw Candy -- you saw Maria hand the pocketbook to Candy?

A Yes.

Q Then what, if anything, did Candy do?

A Then he left with us.

Q Candy came back to you?

A Yes.

Q Did you see where Maria went?

A No. She walked away.

Q She walked away.

MR. STONE: I object to his rephrasing the answer every time.

THE COURT: The objection is overruled.

Did Candy, when he came back across the street, bring the pocketbook with him?

THE WITNESS: Yes.

THE COURT: Let's go ahead. All right.

Q What, if anything, happened now?

A We got into a cab.

Q By "we," who are you referring to?

A Candy, Bruce and myself.

Q Then what happened?

A We went to the Market Diner.

Q In the cab?

A Yes.

THE COURT: Where is it?

THE WITNESS: 43rd Street.

THE COURT: And what?

THE WITNESS: 11th Avenue.

THE COURT: 43rd Street and 11th Avenue, all right.

Q When the cab stopped at the Market Diner, what, if anything, happened.

A Right before we got out, Candy gave me the bag.

Q Candy gave you the bag?

A Yes.

Q Did you get out of the cab?

A Yes.

Q Who was in the cab?

A Candy, Bruce and myself.

Q Did all three of you get out of the cab?

A Yes.

Q At this time, you got out of the cab?

A Yes.

Q Did you have any conversation with Candy?

A He just said --

Q Did you have a conversation?

A Yes.

Q What did he say to you and what did you say to him?

A He says to wait on the corner there and get the guys --

Q Pardon?

A He thought the guy was a cop.

Q What did he say?

A He said to wait on the corner.

THE COURT: When you got out of the cab with Bruce and Candy, who had the pocketbook?

THE WITNESS: Candy gave it to me.

THE COURT: Candy gave it to you and told you to wait on the corner?

THE WITNESS: He said he would wait on the corner.

THE COURT: Candy said he would wait on the corner?

THE WITNESS: Yes.

THE COURT: While you and Bruce went with the pocket book?

THE WITNESS: Right.

Q Did Candy say anything else to you at that time?

A He said watch the guy to see if it's a cop.

THE COURT: I can't hear you.

THE WITNESS: He said watch, the guy might be a cop.

Q What did you say?

A I said okay.

Q What, if anything, did you do at this point?

A I went with Bruce over by the diner.

Q Did you see where Candy Mayet went?

A He was on the corner.

Q You went with Bruce to the diner?

A Yes.

Q Did you go right into the diner?

A No.

Q What did you do?

A We sat on the ledge outside the diner, like a flower pot.

Q It was in front of the diner, in front of the Market Diner?

A Yes.

Q At any time when you got out of the cab, you got the pocketbook, did you put anything into the pocketbook?

A Yes.

Q What did you put into the pocketbook?

A A telephone book and a pack of cigarettes.

Q Do you know what kind of cigarettes?

A Marlboros.

MR. BUCHWALD: Would you mark this Government Exhibit 4 for identification.

(Government Exhibit 4 marked for identification.)

Q Now, I show you what has previously been marked as Government Exhibit 4 for identification and ask you if you can identify that item?

A It's my telephone book.

Q Is this the phone book that you put into the pocketbook?

A Yes.

Q Why did you put the phone book into the pocketbook?

A Because I was carrying it in my hand.

Q How long had you had it in your hand?

A All day.

Q When you put the phone book into the pocketbook, did you see anything else in the pocketbook?

A Yes.

Q What did you see?

A A package.

Q What package?

A The tinfoil and plastic.

Q Then you went with Bruce to the front of the Market Diner; is that correct?

A Yes.

Q Then what happened, if anything?

A His friend came along.

Q Bruce's friend?

A Yes.

Q What happened when he came along?

A He said, "Hi Bruce."

Q Did Bruce introduce you?

A Yes.

Q What was this fellow's name?

A Greg.

Q What happened when you met Greg?

A I felt his waist to see if he had a gun.

Q Did he have a gun?

A No.

Q Then what happened.

A We went inside the diner.

Q Then what happened? Who went inside the diner?

A Me, Bruce and Greg.

Q Then what happened?

A He asked me if I had the package.

Q Who asked you about the package?

A Greg.

Q What did he say to you and what, if anything, did

you say to him?

A He asked me if I had the package and I said yes. He asked me what it was cut with. I told him I didn't know.

Q Pardon?

A He asked me what it was cut with.

Q He asked you what it was cut with; and what does that term mean?

A Cut the coke.

Q What does that mean?

A Dilute it.

Q Dilute it?

A Yes.

Q He asked you what it was cut with?

A Yes.

Q Did that mean to you that he was asking you what it was diluted with?

A Yes.

Q What did you say to him?

A I didn't know.

THE COURT: You told him you didn't know what it was cut with, is that right?

THE WITNESS: That's right.

Q Did you have any further discussion with him?

A He showed me about $1,000.

Q He showed you money?

A Yes.

Q What did he do, just take it out?

A He pulled a couple of hundreds out of his pocket.

Q Where were you at this time?

A Sitting at the counter.

Q Then what happened?

A He said, "Let's go downstairs to the bathroom and we will make the deal there," because there were people upstairs.

Q Then what happened?

A Greg and I went downstairs to the bathroom.

Q What about Bruce?

A He stayed upstairs.

Q Where did you go with Greg?

A Into the men's room.

Q Was it downstairs in the Market Diner?

A Yes.

Q Then what happened?

A We went into the men's room and he said to give him the package. So I went to give him the package and he pulled out a gun and told me he was from the DEA.

Q Did he have a gun?

A There were two other guys in there. They came in

with guns.

Q Two other people came in with guns?

A Yes.

Q Did Greg then identify himself?

A Yes.

Q What did he identify himself as?

A He was an officer of the DEA.

Q DEA?

A Yes.

Q Do you know if that stands for Drug Enforcement Administration?

A Yes.

Q You were then placed under arrest?

A Yes.

Q Did he take the package from you?

A Yes.

Q Did he take the pocketbook from you?

A Yes.

MR. BUCHWALD: No further questions.

THE COURT: Suppose we take a few minutes recess.

Madam foreman, ladies and gentlemen of the jury, suppose you retire to the jury room and we will take our mid-morning recess.

(The jury left the courtroom.)

THE COURT: Mr. Shapiro, do you suppose if you took some water, it would help you?

THE WITNESS: Yes.

THE COURT: It is terribly difficult to hear and you really have got to shout, almost, because these people in the jury box aren't able to hear you. It's a strain on you but I will have to ask you to do it.

THE WITNESS: Yes.

THE COURT: Is there 3500 material?

MR. STONE: He has just given it to us, your Honor. It is fairly voluminous.

THE COURT: That is why I called the recess, to give you a chance to read it.

MR. STONE: Could he in the future give it to us before the witness testifies?

THE COURT: I have no power to do it. I think it is a good idea because it saves time, but you can look at it now.

MR. BUCHWALD: Let the record reflect at this time the following 3500 material has been turned over to defense counsel: On Monday morning preceeding the trial there was turned over to Mr. Stone item 3601, which is a statement of the defendant Candido Mayet on a standard form 306 from the United States attorney's office, dated July 11, 1973,

consisting of three pages. Prior to the commencement of the trial there was turned over to Mr. Willis a statement of Marie Aguilar. This is Item 3502, a standard Form 306 of the United States attorney's office, dated August 6, 1973, also consisting of three pages.

After the jury was selected yesterday morning, there was turned over to both counsel Item 3503-A, which is the grand jury testimony of Michael Lorber, dated July 18, 1973, consisting of three pages. And Item 3503-B, which are certain conference notes relating to a conference with Michael Lorber by an assistant United States attorney, consisting of two pages.

There was, in the most recent recess after Mr. Shapiro's direct examination, turned over to both counsel the following items: Item 3506-A, grand jury testimony of Mr. Shapiro, dated July 18, 1973 consisting of 12 pages. Item 3506-B which are notes of a conference between the assistant United States attorney and Mr. Shapiro, consisting of five pages. Item 3506-C, which is a standard Form 306 of a statement made by Mr. Shapiro, dated July 10, 1973, consisting of four pages. Item 3506-D, further grand jury testimony of Mr. Shapiro, dated November 21, 1973, consisting of two pages. And Item 3506-E, notes of another conference between Mr. Shapiro and an assistant United States attorney, consisting

of three pages.

(Recess.)

(In open court; jury present.)

THE COURT: All right, Mr. Willis.

CROSS-EXAMINATION

BY MR. WILLIS:

Q Mr. Shapiro, you spoke to the government on several occasions concerning this case?

A Yes.

Q During your discussions with the government, did they inform you or tell you what the crime of perjury is?

A Yes.

Q Do you know what that crime is?

A Yes, it is a federal offense.

Q Tell me what it is, if you know.

A You can go to jail for it.

Q That is the result, what is the crime of perjury, if you know?

A It is lying on the witness stand.

Q Were you told before you appeared before a United States grand jury what specifically the crime of perjury was.

A At the grand jury?

Q Yes, sir.

A Yes, they told me, I think.

Q Did the United States attorney tell you at that time what the crime of perjury was, when you were before the grand jurors, yes or no?

A I don't understand what you are saying.

Q I am asking you, did you ever appear before a grand jury concerning this incident?

A Yes.

Q When you appeared before the grand jury did the United States attorney tell you, in the presence of the grand jurors, what the crime of perjury was? Did he explain it to you?

A Yes.

Q Do you understand it?

A Yes.

Q Were you represented by an attorney when you appeared before the grand jury?

A No.

Q Why not?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Were you offered counsel?

A Yes.

Q Did you refuse that offer?

A At the time of the grand jury?

Q Yes, sir.

A Yes.

Q Have you conferred with private counsel up until today's date?

A Yes.

Q Were you represented by private counsel when you appeared in the federal court and pleaded guilty to these charges?

A Yes.

Q What was the name of your attorney.

A Mr. Mogul.

Q Molden?

A Mogul.

Q Did the United States Government or did the U.S. attorney assist you in getting counsel?

A Yes.

Q Did your counsel discuss your plea of guilty with the United States attorney?

A I don't know.

Q Did you ever talk to your lawyer?

A Yes.

Q When?

A On different occasions.

Q When was one of the occasions, the date?

A I don't remember exactly.

Q Where did you meet with your lawyer?

A His office.

Q Where is his office?

A Park Row.

Q Did your lawyer discuss testifying in this court?

A I don't know how to answer that. He didn't use those words.

Q Did your lawyer tell you or did you discuss with your lawyer the fact that you were going to appear in the United States District Court and give testimony against Candy Mayet and Maria Aguilar?

A Yes.

Q Was this attorney retained by you or appointed?

A Appointed.

Q And he was appointed through the assistance of the U.S. attorney?

THE COURT: No, I don't think that is accurate. He is assigned by a magistrate or by the Court.

Q You say you met with your attorney how many times, Mr. Shapiro?

A About four or five times.

Q Did you tell him that you wanted to plead guilty?

A Not at first, no.

Q Not at first?

A No.

Q Well, you met with your lawyer after you appeared before the United States grand jury; is that correct?

A Yes.

Q When you appeared before the grand jury you didn't have an attorney, did you?

A No, I did.

Q You did have an attorney?

A Yes.

Q Who represented you when you appeared before the grand jury?

A Nobody.

Q Excuse me?

A No one.

Q Did you have counsel?

A Not with me at the grand jury, no.

Q So you didn't have counsel to advise you when you were before the grand jury, did you?

A No.

Q Had you spoken to your assigned counsel before appearing before that grand jury?

A Yes.

Q Did you tell him that you were going to testify against yourself, Mr. Mayet and Maria Aguilar?

A Yes.

Q And did he tell you that anything you said before that grand jury could and probably would be used against you?

A Yes.

Q And before appearing before that grand jury you had no discussion about pleading guilty to these charges?

A Yes.

Q You did or you didn't?

A I just told him that I would tell the truth, that is all.

Q Did you or did you not have a discussion concerning pleading guilty in a federal court to these charges before you appeared before the grand jury?

A I don't remember if I did or not.

Q You don't remember?

A No.

Q After you testified before the grand jury, did you meet with your attorney?

A Yes.

Q Did you tell him what you had done?

A Yes.

Q When did you agree to plead guilty, sir?

MR. BUCHWALD: With who? Could we have a clarification on the question?

THE COURT: What is the matter with it?

MR. BUCHWALD: I don't think the question is clear.

THE COURT: Read it.

(Question read.)

A In early November.

Q Early November?

A Yes.

Q When did you appear before the grand jury?

A Sometime before that.

Q Do you know when?

A I don't remember the date.

Q Would it refresh your memory if I said July 18, 1973?

A I still am not sure if that was the date.

Q You know you did testify before the grand jury?

A Right.

Q Could it have been in the month of July?

A Yes.

Q Could it have been within two weeks after you were arrested on this charge?

A I don't chink it was that soon, though, was it?

MR. WILLIS: Your Honor, I would like to have the Court take notice of the date of the grand jury proceeding.

THE COURT: I am sure the Government will stipulate it.

MR. WILLIS: July 18, 1973, your Honor.

MR. BUCHWALD: The Government will stipulate that Mr. Shapiro appeared twice before the grand jury. That was one such date.

THE COURT: All right.

Q So if we count approximately 14 days, a two-week period from the day you were arrested, in fact, you appeared before the grand jury within two weeks of your arrest date; is that correct?

A Yes.

Q After you were arrested, Mr. Shapiro, were you brought to the Federal Building?

A Yes.

Q Were you incarcerated? Were you jailed?

A Yes.

Q Was bail placed on you?

A Not before I went to the magistrate.

Q How long did you remain in jail, sir, before being released on bail?

A One night.

Q While you were in jail, did you talk to the United States Government agents or employees?

A In jail?

Q On your way to jail.

A No.

Q You had no discussions --

THE COURT: You have to speak up. I can't hear you. You say no?

THE WITNESS: No.

THE COURT: He said no.

MR. WILLIS: None?

THE COURT: That is what he said.

Q How about right after you were arrested, sir, did you talk with them at all?

A Yes.

Q Did you express a desire to cooperate with the Government?

A Right away?

Q Right away. Were you handcuffed from the Market Diner, yes or no? Were you placed in handcuffs?

A Yes.

Q Were you then taken directly to the Federal Building?

A No.

Q Where were you taken?

A Back to the coffee shop.

Q Back to the coffee shop in handcuffs?

A Yes.

Q May I assume -- and correct me if I am wrong, now -- that that was an unpleasant experience?

A Yes.

Q And after you went to the coffee shop in handcuffs, where else did you go in handcuffs?

A Up to the jail.

Q May I also assume, Mr. Shapiro, that being in the jail was an unpleasant experience?

A Yes.

Q Have you been in jail before, anywhere, any place at any time?

A Yes.

Q You have been?

A Yes.

Q So this wasn't a new experience for you, was it?

A Yes, it was kind of new.

Q I can't hear you, sir.

A It was new, yes.

Q It was what?

A New.

Q You had never been in jail before?

A One day.

Q You had been in jail before?

A Yes.

Q So it wasn't a totally new experience to you, was it?

A No.

Q When you were brought to the jail, did any of the Government agents want to talk to you?

A Yes.

Q You did talk to them, didn't you?

A Yes.

Q You wanted to help yourself, did you not?

A Yes.

Q You wanted to get out of jail, did you not?

A Yes.

Q As far as you could get out; correct?

A Yes.

Q And didn't the Government agents tell you that if you helped them, they will help you?

A Yes.

Q Isn't that a fact?

A Yes.

Q And the way that they could help you would be to get you out of jail; isn't that correct?

A No.

Q They wouldn't help you or offer to help you meet bail so you could go out with the other people and socialize? Didn't they say something to you about not having to sit in jail for a long period of time?

A They said they would try to help me get out.

Q And with that in the back of your mind, their assistance to get out of the federal penitentiary, you talked to them?

A Yes.

Q And when you talked to them, I assume you talked to them about Candy?

A Yes.

Q And I assume you talked to them about Maria Aguilar?

A Yes.

Q And you told them everything you could to help yourself; correct?

A Yes.

Q How were you feeling at that time? Were you emotionally upset?

A A little depressed.

Q You were in the federal penitentiary, were you not?

A I was up at the office there.

Q Had you been in the penitentiary yet?

THE COURT: It's the Federal Detention headquarters.

it's not a penitentiary.

MR. WILLIS: I am sorry.

Q You had been handcuffed; correct?

A No.

Q You hadn't been handcuffed?

A Yes. They took them off.

Q May I assume that you knew, and if I am wrong, you correct me, but in your own mind you knew, after you left the agents you weren't going to the Hotel Hilton, were you?

A No.

Q You were going to jail?

A Yes.

Q They made that perfectly clear to you, didn't they?

A Yes.

Q You were upset?

A Depressed.

Q Were you thinking clearly under those conditions?

A Yes.

Q You were?

A Yes.

Q As clear as you are thinking right now, sir?

A Yes.

Q Are you depressed now?

A Yes.

Q May I ask why you are depressed right now?

THE COURT: No, you may not.

MR. WILLIS: I'm sorry, strike that.

Q May I suggest or ask you if this courtroom is a more pleasant atmosphere than where you were when you gave statements to the Government?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q In any event, you did talk, didn't you?

A Yes.

Q And you wanted to convince the Government, in particular the Federal Bureau of Narcotics, that you were a good guy; am I right?

A Yes.

Q And the best way to convince them that you were a good guy was to give them other names; correct?

A Yes.

Q Give them as much material as you could possibly give them?

A Yes.

Q Now let's find out, sir, how accurate the material you gave them was.

THE COURT: No, no statements or comments. Just ask questions.

Next question.

Q Did you find out that the Government knew a lot about Harry Shapiro?

A No.

Q Did they know Harry Shapiro?

A No.

Q They didn't know you?

A No.

Q They didn't tell you anything about your background?

A Yes.

Q They did, didn't they?

A Yes.

Q As a matter of fact, the Government knew Harry Shapiro pretty well, didn't they?

MR. BUCHWALD: Objection, your Honor.

THE COURT: You can ask him -- that really calls for a conclusion. You can ask him everything they told him, sir.

MR. WILLIS: I will restate it, Judge.

Q Didn't the Government know that Harry Shapiro was a trafficker in cocaine businesses?

MR. BUCHWALD: Same objection.

THE COURT: You can ask him if they told him that they knew this.

Q Did the Government tell you that they knew you were dealing in cocaine?

A No.

Q They didn't know that?

MR. BUCHWALD: Objection as to that comment.

THE COURT: Not what the Government knew or didn't know. That would call for his opinion and conclusion. You can ask him everything they told him.

Q Mr. Shapiro, what did the Government tell you about yourself? I am hard of hearing so would you please talk as loud as you can.

A They told me I was a patsy. I was a fall guy.

Q A patsy and a fall guy; correct?

A Yes.

Q Before you go any further, what does "a patsy" mean?

A A sap.

Q "A fall guy" means what?

A The guy who gets all -- gets everything.

Q I can't hear you.

A The guy who takes the whole rap.

Q Did they suggest that you shouldn't take the whole rap?

A Yes.

Q After they told you you were a patsy and a fall guy,

did you ask them why, why do you call me that?

A No.

Q You didn't ask them?

A No.

Q Were you handcuffed at this time?

A No.

Q After they said you were a patsy and a fall guy, what else did they tell you about yourself?

A They just asked me about different things.

Q Like what different things? And loud, please.

A Things concerning this case.

Q What things did they ask you concerning this case?

A Where I got the cocaine from.

Q What did you tell them?

A Candy.

Q You didn't tell them Maria, did you? When you met with them that time, did you tell them Maria?

A Yes.

Q You did? Did they take notes?

A I don't know.

Q You told them you saw cocaine in Maria's posession, in her hand; you told them that, sir?

A I don't know if I said in her hand.

Q Where did you see Maria with the coke that you

told the Government, at its very inception, when you were arrested, that you saw it with Maria?

A In the bag.

Q In the bag, the pocketbook?

A Yes

Q That is this pocketbook right here; is that correct?

A Yes.

Q Isn't it a fact, Mr. Shapiro, that you used pocketbooks, shoulder bags; isn't that a fact?

A No.

Q You never wore a shoulder bag, sir?

A No.

THE COURT: Shaking your head or nodding doesn't register with the reporter.

THE WITNESS: No, I didn't.

Q Do you know what men's shoulder bags are?

A Yes.

Q Is it fair to say you were a pretty sharp dresser?

A Not when I wanted to be, no.

Q Sir, louder, please.

A Not when I wanted to be.

Q Not when you wanted to be. Is it because you didn't have enough money?

A Yes.

Q When you did have money, did you buy nice clothes?

THE COURT: That is irrelevant.

Q Let me divert for a moment.

Mr. Shapiro, you said that you took this pocketbook from Candy; correct?

A He gave it to me.

Q And he gave you this pocketbook when a taxicab, in which you and Candy were in, were pulling up to the Market Diner?

A Right.

Q And you said you deposited, at that time, two articles. One, you deposited a telephone book, marked 4 for identification, your telephone book, and, two, a pack of Marlboro cigarettes. Sir, you were going to the Market Diner with the purpose of taking out of that handbag narcotics; correct?

A That is right.

Q And you were going to have to go into that handbag moments after you arrived at the Market Diner; is that right?

A That is right.

Q Why didn't you hold on to your two possessions? You had them all day.

A Because the cigarettes I had in my pocket and the book I had in my pants; and when I sat in the cab, I had

to take it out because it was getting all crushed.

Q That is the reason why?

THE COURT: That is what he says.

Q But you didn't get the pocketbook until the cab pulled up to the Market Diner.

A When I sat down in the cab, I had those two things in my hand.

Q But you didn't put them in until you were about to get out of the cab, when you were going to stand up again and you could have stuck it back in your pants; correct?

A Yes, but I put it in the bag.

Q And when you put it in the bag, that was a good chance for you to look into the bag and notice there was cocaine?

A I saw cocaine in it.

Q Didn't Maria Aguilar have a beige bag that day, handbag?

A I don't know, I seen that bag.

Q You don't know? Does it mean it's right or wrong or you just don't remember?

A She might have had two.

Q Two handbags?

A If you say so.

Q You say she might have had two; correct? Now, I

want you to look inside this pocket book here.

MR. WILLIS: May I, your Honor?

THE COURT: All right.

Q What do you see, women's posessions, hairbrushes, cigarettes, lipstick, chewing gum, keys in the handbag, some money, a ring; is that right?

A Yes.

Q And yet you say she might have had two handbags; is that correct?

THE COURT: Yes, that is what he said.

Q The other handbag might have been beige in color; is that right?

THE COURT: It could be any color. This is all just speculation.

Q What you are saying is that Maria gives the handbag filled with personal posessions to Candy?

THE COURT: That is what he said. Next question.

Q Candy gives it to you at the diner?

THE COURT: That is what he said.

Q Were all these posessions in the handbag when you opened it up.

A To put my stuff in?

Q When you opened it to put your stuff in and you saw cocaine.

A In the cab?

Q Do you remember?

A I didn't see anything. I opened it up and saw cocaine.

Q You didn't see all these objects, but you saw cocaine?

A It was on top.

Q Laying on top of all the other objects?

A Yes.

Q The same cocaine, the same description that you saw in Candy's pocket?

A The same package.

Q Let me ask you this: If you saw a package in Candy's pocket, how do you know what was in the package if it was in his pocket?

A I don't say there was cocaine in the package. I didn't say what was in the package.

Q How big was the cocaine, three ounces?

A Supposed to be.

Q How big is three ounces, sir? Just show the jury, make a fist. A small amount?

A I don't know how big it is. I didn't see it that day.

Q Mr. Shapiro, you are making a movement with your

hand --

A I never saw three ounces of cocaine. I saw the package but not the three ounces of coke.

Q How big was the package?

A About that big (indicating).

Q The package was that big with three ounces?

MR. BUCHWALD: Could the record reflect that the witness has his hands approximately -- however many inches Mr. Willis would like to describe it as, apart.

Q That size package, three ounces?

A I didn't weigh it. It was supposed to be three ounces.

Q Did you ever see three ounces of coke?

A No.

Q Had you ever seen one ounce of coke?

A Yes.

Q Now, you show the jury by using your hand this way, or what ever way they can see it, how big the size of one ounce of coke is, sir.

THE COURT: Not how big it is, but how big was the package that he saw.

THE WITNESS: Of the one ounce?

THE COURT: You say you saw a one-ounce package of cocaine. How big was the package at that time?

[redacted]

THE WITNESS: It was in tinfoil, open.

THE COURT: Open tinfoil?

THE WITNESS: Yes.

THE COURT: Go on.

Q And the package you saw Candy with was about that big; right?

A No, about that big.

Q A little smaller?

A And that was a package that fit into his pants; right?

A Yes.

Q Front or back?

A Front.

Q What was he wearing?

A He had white shoes on. I think he had the grayish pants on.

Q Does he wear his pants tight?

A I don't know.

Q Yes or no.

THE COURT: He says he doesn't know.

MR. WILLIS: I can't hear.

THE COURT: That is my understanding. He says he doesn't know.

Q You don't know?

A No.

Q Were the pant pockets the way my pant pockets are, vertical, or were they the type of pockets that go straight down?

A Like yours.

Q Was he wearing a jacket?

A No.

Q What kind of shirt?

A Short sleeve.

Q Short sleeve?

A Yes.

Q Let's go back for a moment in time to when you were arrested, sir, and you are with the Federal Government and they are asking you questions.

Did you volunteer the information on Maria Aguilar?

A Yes.

Q Did they know of her?

A Yes.

Q They did?

A Yes.

Q What did they know about her? You tell me.

THE COURT: What did they tell him at that time they knew about it.

MR. WILLIS: Strike that.

Q When you talked to the Government, did you give them written information or oral information?

A Oral.

Q Did you see them writing down any of the information?

A No, they were just talking.

Q How long did you talk with them that day?

A When I got arrested?

Q Yes.

A About 40 minutes.

Q Did you tell them about the incident with Susan Marcus?

A No.

Q Why not?

A I didn't want to involve anybody else.

Q They weren't involved in what?

A I said, I didn't want to implicate her.

Q You didn't want to implicate Susan Marcus?

A No.

Q But you didn't mind implicating Maria?

MR. BUCHWALD: Objection.

THE COURT: You can make that argument to the jury.

Q You, in fact, implicated Maria; correct?

MR. BUCHWALD: Objection.

THE COURT: I won't permit that.

Q Did you give any statements about Maria Aguilar

to the Government?

A Yes.

Q Did you give any statements about Susan Marcus?

A No.

Q Was Susan Marcus a friend of yours?

A No.

Q You didn't think you had a friendship with her?

THE COURT: This is just argument.

Q Were you friends with Maria?

A No.

Q Did you like Maria?

A I have nothing against her.

Q In fact, sir, you and Maria didn't get along too well in the shoe company, did you?

A She didn't work there.

Q She didn't work there?

A No.

Q She didn't work for the shoe company?

A No.

Q You never saw her in the plant or in the store at any time?

A Yes.

Q What did you think she was doing there?

A Hanging out.

Q Hanging out in a shoe store?

A Yes.

Q Hanging out in a factory?

A Yes.

Q Did you ever talk to her about shoes?

A A little bit.

Q Did she seem to know what she was talking about, did she have knowledge?

A I don't know that much about shoes myself.

Q You were selling Mr. Mayet's shoes, weren't you?

A That is the only kind of shoes I knew about.

Q I am only asking you --

THE COURT: The next question, please.

Q When you talked to Maria Aguilar, did she seem to know the shoe business?

A The shoe business, no.

Q Were you aware, did you find out that she purchased there? She was a purchaser for the company. Did you find that out?

A No, I didn't know that.

Q Did you ever ask her?

A No.

Q How many times did you see her in the business?

A I can't say exactly. I don't remember.

Q Did you think that Maria was Candy's girlfriend?

A Yes.

Q You thought that?

A Yes.

A You never talked to Maria about it, did you? Yes or no.

A No.

Q Did you ever talk to Candy about it?

A Yes.

Q He said she was his girlfriend?

A Yes.

Q When was that conversation.

A That was one time at his apartment and one time --

Q One time when?

A One time at the apartment --

Q Whose apartment?

A His, and when I was there.

Q At Candy's apartment?

A Yes.

Q Was Maria there?

A Yes, I met her there once.

Q I can't hear you.

A I met her there on occasion, and we had a party at our apartment and he came with her.

Q He came with her hand in hand?

A Arm in arm.

Q Boyfriend and girlfriend?

A Yes.

Q When you were with Susan Marcus at the shoe store, did you call Maria's apartment when Susan Marcus was standing next to you?

A No.

Q It would be incorrect to say that you, when you were standing with Susan Marcus, called Maria's apartment; is that right?

A Yes, it would be incorrect.

Q Because you didn't have Maria's phone number; isn't that right?

A Right.

Q How long were you standing with Susan Marcus in the shoe store, sir?

A About between an hour and 15 minutes, an hour and a half.

Q When you were with Susan Marcus, did you mention Maria's name?

A Yes, I think I did.

Q You think, you are sure or you are not sure?

A I don't remember.

Q And you know you didn't call her on the phone; right?

A Yes.

Q You are sure of that?

THE COURT: We have been over that and we have been over it. Let's go on.

Q When narcotics, cocaine, was delivered to Susan Marcus, sir, was Maria Aguilar around?

A No.

Q Do you know where it came from?

A The cocaine?

Q Yes, sir.

A No.

Q You didn't know where it came from?

A No.

Q But it was delivered and you gave it to Susan Marcus?

A No, Candy gave it to her.

Q She paid you 235, 240 dollars?

A Yes.

Q Would it be more correct to say $250.

A No, because she only had 250, and we took a bus over, and all, and she said she needed money to get home.

Q So she never paid you $250?

A She gave me about 240.

Q As to this July 9 incident, you worked as a representative for the shoes that Mr. Candido made; is that right?

A Yes.

Q When did you start your employment?

A About 11 months before, and then we had, like, this little argument and there was a slack off there, around Christmas time.

Q You and Candy didn't get along too well, did you?

A We got along but I thought he was cheating me.

Q You thought he was cheating you?

A Yes.

Q Did this quarrel -- is it fair to say hard feelings -- did it last for awhile?

A About a month and a half.

Q During that period of hard feelings, were you under the assumption that Maria and Candy were girlfriend and boyfriend?

A I didn't see Candy then.

Q Did you see Maria?

A No.

Q How many employees were there that you observed or saw in your nine months of employment at this shoe factory and store?

A All together?

Q Yes.

A Including myself?

Q Including yourself.

A They changed people at the store a few times.

Q You don't have to be exact. Approximately how many, more than ten?

A About nine.

Q Total employment for the factory was nine?

A Yes.

Q How many shoes were produced per month at that store, do you know?

A It varied.

Q Give me the high.. If you don't know, tell us.

A I don't know exactly.

Q Do you know the names of all the employees of the store?

THE COURT: Is this the store or factory? I am getting a little confused.

Q All the names of the employees of the store.

A No.

Q Do you know all the names of the employees of the factory?

A No.

Q How many Marias worked in the factory?

A None that I know of.

Q You just said you don't know the names of the employees of the factory.

MR. BUCHWALD: Objection.

THE COURT: You are arguing with him.

Q How many Marias worked in the store?

A I don't know.

Q You don't know or you are not sure?

A I don't know how many Marias.

Q Mostly Spanish people?

A Yes, sir.

Q A lot of Spanish spoken around the store?

A Yes.

Q In the factory?

A Yes.

Q Do you understand Spanish, sir?

A No.

Q How many employees, both the factory and the store, were non-Spanish?

A About four or five.

Q What were their names?

A There was Al. He was American.

Q His last name?

A Turner. A girl, Lisa, and then this girl, Cathy,

myself.

Q That is three plus you.

A And another girl, I forget her name; five. Cathy, Lisa, me, Al and this girl, Cathy's friend.

Q Do you remember me just asking you whether most of the employees were Spanish?

A Yes.

Q Do you remember asking you how many employees worked in the factory, and you said approximately nine?

A Yes.

Q Do you know you just reeled off five employees that are American and not Spanish?

MR. BUCHWALD: Objection.

THE COURT: That is just an argument, You can make this argument in explanation to the jury, but we cannot have any more argument with the witness. Let's ask questions.

Q Were a majority of the employees Spanish or American?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q You set up a deal for three ounces of cocaine for around July 9; is that right?

A Yes.

Q What figure, cash value, did you put on these three ounces?

A How much it was going to cost them?

Q Right.

A 2,250.

Q Would you have to pay Candy any money for the cocaine?

A Yes.

Q You would?

A Yes.

Q How much were you going to have to pay Candy?

A 15 or 1600.

Q You were going to make a profit from 15 or 1600 up to to 22; is that right?

A I had to split that.

Q Split it with who?

A Bobby Kelly.

Q How did you figure price? How did you come to price?

A I just figured what an ounce would cost.

Q Had you been selling cocaine before ever working for this shoe factory?

A No.

Q How many sales had you made prior to July 9?

A One.

Q And then you took it upon yourself to start pricing the cocaine out; is that right?

A I don't understand.

Q You had made one sale before July 9; correct?

A Yes.

Q And now you started to price it out yourself, putting a value on it; is that right?

Q Judging on that sale, I figured about what an ounce would be.

Q Were you a drug user?

A I have used drugs, yes.

Q What drugs?

A Marijuana and amphetamines and I snorted a little cocaine.

Q You snorted a little cocaine?

A Yes.

Q When you went to the shoe store on July 9, you had already set a deal up in New York; right?

A Right.

Q Had you spoken to Maria Aguilar about that deal?

A No.

Q Had you conferred with her at any time previous to July 9 about the sale of cocaine?

A I don't remember.

Q July 9 comes and you tried to reach Candy; right? You can't reach Candy and you try to reach Maria?

A Yes.

Q Previous to this date, you had never talked about drugs with Maria? Now you call, or you attempt to call, Maria to reach Candy; is that right?

A Yes.

Q Only you don't have the phone number.

A Right.

Q So you ask somebody to call Maria?

A Right.

Q Maria Aguilar or just Maria?

A Maria.

Q Did you know her last name?

A No.

Q You said you don't know if there were any other Marias employed by the company; right?

A No.

Q And you get a call back from Maria?

A Right.

Q Maria who?

A Maria.

Q Can you tell me with any certainty that the girl that called you back on the phone is the same girl in this courtroom, on the basis of that conversation?

A Yes.

Q How?

A She came to the store.

Q On the basis of the conversation that you had, not the fact that she walked into the sore.

A By the voice.

Q By the voice?

A Right.

Q How many times did you talk to Maria before that?

A Quite a few occasions.

Q Quite a few occasions?

A Yes.

Q Lengthy conversations?

A No.

Q Hello and good-bye?

A "Hello, where is Candy? I don't know. Did he come back? Did he go to the store? Did he come back?" Just that.

Q Do you want to repeat that as loud as you can because you mumbled the whole thing.

THE COURT: We will have the reporter read it.

(Answer read.)

Q Let's go back one moment where you are with the Federal Government and you have just been arrested. Did you say to the agents, I will give you Candy, I will give

you Maria?

A No.

Q When you spoke on the phone, you say that a girl by the name of Maria said to you she has got four ounces of cocaine?

A Yes.

Q What did you tell her?

A I said I will need three.

Q Did she say she would be right down?

A I said meet me at the store.

Q What store?

A Puma.

Q Had you spoken to Candy?

A No.

Q Sometime later Maria and Candy appeared?

A Yes.

Q Together?

A No.

Q Separately?

A Yes.

Q Maria comes in carrying that handbag?

A Yes.

Q How about the beige one she might have had, did she also carry in that one?

A I didn't see that. I didn't see no beige one. I said there might have been one, but I didn't see one.

Q She takes the handbag and she goes into the back with Candy?

A Not right away. She sat down outside.

Q What happened?

A Then Candy came in.

Q What took place?

A Candy was mad at Al because he had called her up.

Q What?

A Candy was a little angry at Al that he had called her.

Q That Al had bothered Maria?

A That he had called Maria.

Q Did he bawl Al out for that?

A They had words, like.

Q Then he took Maria into the back?

A Yes.

Q Closed the door?

A Yes.

Q Do you know what went on in the back?

A No.

Q Did you see anything?

A No.

Q Did you see Maria with cocaine?

A No.

Q They come out of the back together?

A Yes.

Q Maria still has the pocketbook?

A Yes.

Q You then go to New York?

A Right.

Q While the pocketbook was in the sole posession of Maria Aguilar, did you ever look in it and see cocaine?

A When, in the car?

Q In the car, wherever Maria Aguilar had posession of that handbag out in the open in front of you, did you ever look into the bag and see cocaine?

A No.

Q Did you tell the federal agents that the cocaine was Maria Aguilar's?

A No.

Q Did you tell them that she had posession of it?

A I said it was in a bag.

Q You said it was in a bag?

A Yes.

Q Did you tell them she had posession of the bag?

A Yes.

Q Did you tell them that you never saw the cocaine in the bag while she posessed it?

A I don't understand what you mean.

Q You go to New York in a car. You sit in the back of the car; correct?

A Yes.

Q While you are in the store in the presence of Maria, while she is standing there, do you talk to her about selling cocaine?

A Yes.

Q You do?

A Yes.

Q Tell me the conversation.

A I don't remember exactly but I asked her if she had the package, and she said yes.

Q In the presence of Candy?

A No, way before he came in. As soon as she came in, I said, "Do you have the package," and she said, "Yes." And Candy came in.

Q You didn't repeat that on direct examination.

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q She walked in and the first thing you say to her is, "Do you have the package," the first thing?

A Yes.

Q What does she say to you?

A "Yeah."

Q Just "Yeah"?

A Yes.

Q Nothing else, "Yeah"?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q That is all you remember about the conversation?

MR. BUCHWALD: Objection.

THE COURT: I will permit that.

A She asked me if I ran into Candy.

Q I can't hear you.

A She asked me if I saw Candy, and I said no.

Q And she went her way and you went your way?

A Candy came in.

Q Did you ask her what packages?

A No.

Q Did you use the word "cocaine"?

A I might have, I don't remember.

Q Did you tell that to the grand jury, what you just said in this courtroom, that you had a conversation with Maria Aguilar when she first walked into the store? Did you tell that to the grand jurors?

A I don't remember.

Q You don't remember?

THE COURT: He says he doesn't know.

Q I am going to show you the colloquy of your grand jury minutes. I want you to look at page 7 and I want you to tell this jury if anywhere on page 7 you tell the grand jury that you had a conversation about cocaine with Maria Aguilar in the store. Is it fair to say, Mr. Shapiro, that there was no mention of that conversation to the grand jurors?

A That is right.

Q May I ask you, sir, why you didn't remember to tell the grand jury but now you remember to tell this jury?

MR. BUCHWALD: Objection.

THE COURT: You may not ask him that question. It may be that he was not asked anything about it. It's just an argument with the witness.

Q Describe the object that you saw in the pocket of Candy.

A Just cellophane with tinfoil in it. I just seen the top.

Q Cellophane and tinfoil?

A Tinfoil and cellophane.

Q Tinfoil and cellophane?

A Yes.

Q Do you remember being asked before the grand jurors, "Did you observe what that object looked like, did you see any of it?" Do you remember your answer, sir?

THE COURT: What was it? Did he ask this question and did you give this answer?

Q It was cellophane and plastic.

THE COURT: Was that your answer?

THE WITNESS: Cellophane and plastic was the same thing.

THE COURT: Was that your answer?

THE WITNESS: If it says so in the thing.

THE COURT: He says yes. If it says so, he will accept it. Go on.

Q Sir, I ask you if in your experience plastic and tinfoil are the same.

A That is not what I said.

Q You drive to New York and three of you are in the automobile; correct?

A Right.

Q Any conversation about the narcotics then?

A Yes, there might have been. I don't remember exactly what.

Q You are not sure?

A No.

Q Marie is in the car with you?

A Yes.

Q You get to New York, park the car?

A Yes.

Q Where do they park the car?

A Under the building there of Mike's showroom. In the basement there is a parking lot.

Q Who paid for the parking?

A I didn't pay for it.

Q Do you know who did?

A No.

Q Did you get a parking stub?

A Yes.

Q Who took the parking stub?

A I took it, I think.

Q You took the parking stub?

A Yes, I figured I would put it in the book.

Q Did you put it in your pocket?

A I think I put it in that book.

Q In the book, the telephone book?

A I think so.

Q When you went upstairs, did you go up to the 17th floor?

A Yes.

Q When you went up to the 17th floor, was Maria privy to the conversation that you had?

A I don't understand what you are saying.

Q Was Maria part of the conversation concerning the sale of cocaine?

MR. BUCHWALD: Could we have a time frame here, your Honor?

MR. WILLIS: I will take it step by step.

Q You go up to the 17th floor, and who do you see?

A Mike.

Q Michael's name is what?

A Molina.

Q Is Maria with you or is she outside waiting in the hallway?

A In the hallway.

Q So she wasn't present when you talked to Mike Molina?

A Right.

Q Did you talk to Molina about cocaine?

A No.

Q What was your conversation with Molina?

A He introduced me to Bruce.

Q Did you talk to Bruce about cocaine?

A Yes.

Q Was Maria in the hallway?

A Yes.

Q Did Bruce tell you he didn't have the money?

A Yes.

Q So you got to set up a meeting place where you can transfer the cocaine and the money; correct?

A Yes.

Q So you leave the 17th floor?

A Yes.

Q Maria has been waiting out in the hallway; right?

A Yes.

Q Is it fair to say, or do you remember, Maria ever telling you that the reason she came in to New York was to go to buy leather for the shoe company, and she did it once a week? Did she tell you that or talk to you at all about buying leather?

A I don't remember that.

Q You don't remember that. How about when you went to the 17th floor, were you aware that there were shoe exhibits in that building at that time.

A No, there wasn't. Not that I saw.

Q Did Maria express any curiosity about going to see some of the shoe displays in the building?

A No.

Q No or you don't remember?

THE COURT: He said no.

Q Now, you go across the street. You leave that building and you walk across the street.

A Yes.

Q Maria is standing on the other side; correct?

A Yes.

Q She is not privy to any conversations that take place across the street?

A We first went across the street, the four of us, to the coffee shop.

Q Was she seated next to you?

A No, across from me.

Q Did you leave her?

A I left Candy and her, yes.

Q And you called to make the contact to purchase the cocaine; is that right?

A No.

Q Did you leave to make a phone call?

A No.

Q Did you use a phone?

A No.

Q Did somebody call Bruce?

A No.

Q Did anyone make a phone call to set up a meeting at the Market Diner?

A Not then, no.

Q When?

A After we all finished eating, Bruce and I and Candy went across the street to the phone.

Q You, Bruce and Candy. Maria didn't go?

A No.

Q Did Maria join in on any of the conversation that was taking place about cocaine?

A Just at the table inside the coffee shop.

Q What did she say?

A We were talking, the four of us at the table, and she was there.

Q Did she join in the conversation? Did she talk about cocaine?

A I don't remember.

Q You go across the street to make a phone call; right?

A No.

Q Who goes, you and Candy and Bruce?

A Yes.

Q Maria stays on the other side?

A Right.

Q Candy, you say, takes this pocketbook from Maria; is that right?

A No. First we came back across the street and then he took it.

Q He tells Maria to pick the car up; is that right?

A I don't know what he told her.

Q Did you tell the grand jury when you testified that Candy gave Maria what appeared to be a parking ticket for the car?

Q Does it say it in the notes?

Q "Did you then observe Candy give Maria what appeared to be a parking ticket for the car?" And your answer was, "It was a stub."

A Well, if it says it, I guess I said it.

Q Would you please tell this jury, if you just said before that you took the parking stub --

A Yes, I thought I did.

Q You are wrong?

A Yes, I am not perfect. I don't remember everything.

Q I know that.

THE COURT: No comments, please. What is the next question?

Q The next question is: What is correct, your grand jury sworn statement or your sworn statement in this courtroom?

A The grand jury would be more correct because it was fresher in my mind at the time.

Q In other words, these events and these facts now aren't as fresh in your mind as when you went before the grand jury; is that right?

A Certain specifics are, but things on the side, like who gave who the parking ticket, I don't remember things like that.

Q How about as to the conversation on the telephone when Maria Aguilar said, "I got four ounces"?

THE COURT: We have been over that. No more. Let's go on.

Q You don't see Maria after you place the call. You come across the street and Candy gets the pocketbook and you don't see her again, do you?

A After we left in the cab, no.

Q Do you know where she went?

A No.

Q Did you see her after that?

A No.

Q Did she tell anybody in your presence that she was going to buy leather for the shoes?

A Not that I remember.

Q You don't remember?

A No.

Q Did you give any information to the federal authorities concerning one Susan Marcus?

A Yes.

Q At what stage, sir?

A When I was talking to Mr. Nesland.

Q Mr. Nesland?

A Yes.

Q Let's retrack for a moment. You got out on bail, did you not, on this charge?

A Yes.

Q Did the Government speak up on your behalf when you applied for bail? Did they tell the judge you had cooperated?

A Yes.

Q Is that one of the reasons you cooperated, to get out?

A Yes.

Q After you were out on bail, did you stay in touch with the Government?

A For awhile.

Q Did you prepare or assist them in preparing their case?

MR. BUCHWALD: Objection to the ambiguous word

"prepared."

THE COURT: Sustained.

Q Did you meet with the Government and go over the case?

A Yes.

Q On how many occasions?

A I don't know exactly.

Q When you met with the Government and discussed your case, did they also tell you the maximum penalty, the maximum amount of time you could go to federal prison on?

A Yes.

Q What was the maximum?

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

We will have to wait a moment. The witness asked to be excused for a moment.

(Pause.)

A I think they said 15 years.

Q I want you to tell the jury the conversation, or conversations, that you had with the Government concerning your sentencing on December 4 of this month.

A I was told that they would just advise the sentencing judge that I had cooperated.

Q Did they tell you that the more you cooperated the

better it would be?

A Yes.

Q Did you meet with the Government to go over your testimony?

A Yes.

Q Did they help you in preparing to give testimony in court?

MR. BUCHWALD: Objection as to the characterization.

THE COURT: Sustained.

Q Did they read to you any of your previous testimony before the grand jury?

A Yes.

Q Did they let you go over it before you came to this court?

A Today?

Q Yes, previous to coming here, did they let you read it?

A Yes.

Q Did they let you read the written reports?

A No.

Q Did you give any written reports?

A No.

Q At any time while you sat with the Federal Government, Mr. Shapiro, did you see them taking notes?

A Yes.

Q Have you ever reviewed any of those notes that they took?

A No.

Q Had they discussed this case with you when they were reading from a notebook or a folder?

A Yes.

Q You are not in jail now?

A No.

Q Did you give the Government any other information concerning narcotics, cocaine, involving my client, Maria Aguilar?

A No, just this case.

Q To your knowledge, was Maria Aguilar arrested before or after you testified before the grand jury?

A I don't know.

Q You don't know?

A I think it was before.

Q She was arrested before July -- and I am referring now to the July 18 grand jury testimony that you gave --

MR. BUCHWALD: Asked and answered, your Honor.

MR. WILLIS: Excuse me?

MR. BUCHWALD: I thought you finished your question.

THE COURT: Go ahead.

Q You're saying she was arrested before or after that grand jury testimony of yours?

MR. BUCHWALD: Asked and answered, your Honor.

THE COURT: He says he thinks it was before.

THE WITNESS: I think it was before because it said United States of America versus Harry Shapiro, Bob Kelly, Candy Mayet and Maria Aguilar.

Q Your answer on the arrest of Maria Aguilar is because you just saw her name listed; is that why you assume she was arrested before you testified in the grand jury?

A Yes.

Q You really don't know the date of her arrest, do you?

A No.

Q Have you talked to Susan Marcus about this case at all?

A Once.

Q When?

A On the telephone.

Q Did you tell her that you gave information about her?

A No.

Q When did you speak to her on the phone, the date?

A I don't remember exactly the date.

Q Was it before or after you had given information about Susan Marcus?

A It was just a couple of weeks ago when I talked to her.

Q So it was after you had given the information on her?

A Yes.

Q What did you talk to her about?

A I just called her up just to rap to her.

Q Would you please tell me the conversation?

A I just called her up to ask her for a date.

Q To ask -- were you dating Susan Marcus?

A No.

Q Did you ever date her?

A No.

Q Were you aware she was married?

A No.

Q After you had, in the words of the Government -- strike that.

After you had given information about Susan Marcus to the United States Government, you wanted to take her out on a date?

THE COURT: We have had enough of that, too.

Q Did you, after you gave information about Maria

Aguilar, did you want to take her out on a date?

A No.

Q You are appearing in the court today. Did you receive a subpoena to come here?

A Yes.

Q A Government subpoena?

A Yes.

Q Did anybody tell you from the Government that depending upon how well your testimony goes might depend on how well you do at sentencing time?

A No.

THE COURT: That is just an argument with the witness. The Government doesn't do any sentencing in this court. I do the sentencing.

Q Mr. Shapiro, when you first met with the Government and when you appeared before the United States grand jury, were you of the opinion that the more the merrier? By that I mean, were you of the opinion that the more people you could pull in, the merrier it would be for you?

THE COURT: I won't permit that question or any more along that line. We have been over this ad infinitum. It is just repetitious.

MR. WILLIS: I won't go over it anymore, Judge.

No further questions.

MR. STONE: Do you want me to start now?

THE COURT: Suppose we stop now for our luncheon recess.

Madam Foreman, ladies and gentlemen of the jury, let's meet about ten minutes after two.

(The jury left the courtroom.)

(Luncheon recess taken.)

AFTERNOON SESSION 2:15 p.m.

THE COURT: Mr. Clerk, get the jury in.

MR. BUCHWALD: Mr. Mukasey will be joining us later, your Honor. He has another matter to attend to.

(In open court; jury present.)

H A R R Y S H A P I R O resumed the stand.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. STONE:

Q Mr. Shapiro, have we ever met before?

A No.

Q And we have never talked?

A No.

THE COURT: Mr. Shapiro, don't shake your head or nod because, you see, the reporter has to get the answer. It has to be either yes or no, do you understand?

THE WITNESS: Yes, sir.

Q When did you first meet Mr. Mayet?

A In 1972.

Q Were you employed at that time?

A No.

Q You were out of work?

A No.

Q You were not employed?

A I was employed.

Q Where were you employed at the time you met Mr. Mayet?

A For a company that sells blazers, P.S. Rags.

Q You were a salesman of clothing; is that correct?

A Yes.

Q And Mr. Mayet eventually gave you a job; is that correct?

A Yes.

Q You know that he works for his father, do you not?

A He runs the store.

THE COURT: Keep your voice up.

Q He runs which store?

A I don't know who owns it. They both have the same name.

Q And you have seen his father in the business; is that correct?

A I have seen him in the factory, yes.

Q You have seen him in the retail store?

A No, I never saw him.

Q But you have seen him in the factory?

A Yes.

Q Who paid your salary?

A Candy.

Q That is young Mr. Mayet?

A Yes.

Q Did you ever see Mr. Mayet's sister work in the store?

A No.

Q Did you ever see his mother work in the store?

A No.

Q Have you ever met his mother or sister?

A Sister.

Q Have you ever been convicted of a crime?

A Yes.

Q When was that?

A This case.

Q That is the only one?

A Yes, sir.

Q And you have not been sentenced yet?

A No.

Q When for the first time in your life did you ever sniff cocaine?

A In '72.

Q When?

A After I started working for Candy.

Q You didn't have a conversation with him about cocaine until May of '73; is that correct?

A Yes. About selling, yes.

Q Did you have any conversation with him about cocaine before May of '73?

A I sniffed some once with him.

Q With him?

A Yes.

Q How many times?

A A couple of times.

Q Did you bring the cocaine to him?

A No, he turned me on to it.

THE COURT: He did what?

THE WITNESS: He gave some to me.

Q Did you tell the Government about that?

A Yes, I told them I sniffed it, yes.

Q Did you leave your other job to work for Candy Mayet?

A After awhile, yes.

Q Did you leave your other job on your own free will or were you fired?

A I quit.

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

A I quit.

Q Was that other job a commission job or a salary job?

A Commission.

Q How much were you earning on an average per week on that other job?

A 7 percent commission. 50 percent draw.

Q What was your average earnings for the year before you quit?

A I made about $100 a week.

Q Do you own your own car?

A Now?

Q At the time you worked for that other company.

A Yes.

Q What kind of car?

A It was a '63 Nova station wagon.

Q Station wagon?

A Yes.

Q Do you pay the rent in your apartment?

A Yes. At the time, yes.

Q Did you know that Mr. Mayet lived with his father during this period of time?

A No, he didn't.

Q You didn't know that?

A He had his own apartment.

Q Do you know where that was?

A That was at 56th or 60th Street and Boulevard East. It was next door to 5601, two apartment houses.

Q How much money did you make for the six or seven months that you worked for the Fiesta Shoe Company?

A I can't say exactly.

Q Did you make more or less from Fiesta Shoes or from the sportswear company?

A More.

Q From Fiesta?

A Yes.

Q In selling shoes?

A Yes.

Q Considerably more?

A No.

Q About how much a week would you average?

A It depended. Some weeks I didn't make anything.

Q You worked there seven months?

A Yes, about that.

Q Would you average $200 a week during those seven months?

A No.

Q $150?

A No.

Q $125?

A No, I wouldn't say $125 a week. It varied. Some weeks I didn't make nothing.

Q On the average you made more there than you did at the previous job?

A Yes.

Q It was a good job?

MR. BUCHWALD: Objection.

THE COURT: Yes. I think that calls for a conclusion.

Q Was the shoe job a better job than the sportswear job?

MR. BUCHWALD: Objection.

THE COURT: Yes, the same conclusion.

Q Did you have your own customers to sell shoes or did Mr. Mayet give you the customers?

A He gave me a few and I got a few myself.

Q And did you have a regular routine in which you were to work certain hours?

A Yes, days.

Q And you were to report to work at a certain time and report back at a certain time; is that correct?

A Yes, more or less.

Q Did you do that?

A Yes.

Q Did you have any arguments with Mr. Mayet or his father about the hours you were keeping?

A No.

Q Did you have any complaints by Mr. Mayet or his father because you failed to see certain customers at certain times?

A No, I got around to usually seeing everybody.

Q Did they complain to you that you weren't doing your work properly?

A No.

Q They never did?

A No.

Q Yet you had an argument with Mr. Mayet in January of 1973; is that correct?

A No, it was before that. I didn't work for him during that Christmas so it was before that.

Q When did you start work for the shoe store?

A About September, I would say. Not this September.

Q We are talking about late '72; is that right?

THE COURT: September 1972?

THE WITNESS: No, it was about June or July because I remember specifically because I went with a girl to buy a pair of shoes to the store, and she bought white shoes and they were for summer like.

THE COURT: Summer of 1972 you began?

THE WITNESS: Right.

Q Is that when you first met Mr. Mayet?

A Yes.

Q You went to work for him how long after you met him?

A A few months.

Q And you met him when?

A Around the summer of '72.

Q And you went to work about two months after that?

A No, around September, October.

Q From September or October, how long did you work before you quit?

A About a month and a half.

Q Then you had an argument; is that correct?

A No, there was no argument. I thought I was getting cheated so I just didn't go back to work.

Q How long did you stay away from work?

A A couple of months.

Q You came back when?

A I met Candy in a club in New York and he asked me to come back.

Q When did you come back?

A After the holidays.

Q January, February?

A Around January or February, yes.

Q You are not sure?

A No.

Q So you were out of work for about two months; is that correct?

A Yes.

Q Did you have another job?

A Yes, I had different jobs. I was working laying tar. I was working for Petrillo Brothers in Lindhurst.

Q And you didn't like being cheated, did you?

A I couldn't prove that he was cheating me. That's why I didn't continue working.

Q But you didn't like the idea, did you?

A Being cheated?

Q Correct.

A No.

Q How much money was involved?

A It wasn't one specific amount. Like I was using my car and all and I wasn't getting paid for expenses, stuff like that.

Q Did you put in a bill for the expenses?

A No.

Q Did you have an argument about the expenses?

A Not an argument, no.

Q You just quit for two months during the Christmas season? Is that correct?

A Yes.

Q Were you still mad at Mr. Mayet when you returned in February?

A No.

Q You got along fine?

A Pretty well.

Q How long have you known Robert Kelly?

A I met him around April of 1972.

Q And you roomed with him right away?

A No.

Q When did you start rooming with him?

A Well, my girlfriend and his girlfriend got an apartment together.

Q Then you moved in?

A Yes.

Q Do you know what ethnic background Mr. Kelly is?

A He is Irish.

Q Any Cuban blood?

A He says so. I don't know.

Q He told you that?

A Yes. Spanish, he said.

Q Did he use the word "Spanish" or "Cuban"?

A Spanish.

Q He never used the word "Cuban," did he?

A Not to me, no.

Q When you had a conversation with Kelly concerning cocaine, did you discuss with Kelly how much money you would split between you?

A I averaged about how much.

Q How much?

A Between $700, $800.

Q For what?

A That we would split.

Q For what kind of deal?

A For the three ounces.

Q So you were expecting to make $800 on the three ounces?

A I expected to make $400.

Q How much did he expect to make?

A $400.

Q Both of you would make $800?

A Both of us would make $400 each.

Q $800 profit; is that correct?

A Yes, sir.

Q Who set the price for the cocaine?

A To the guy we were selling it to or the base price?

Q The guy you were selling to.

A I set the price based upon what it would cost me.

Q You told Mr. Kelly what it would cost?

A Roughly, yes.

Q Do you remember telling him?

A I wrote it on that little slip.

Q That is the only way he knew about it?

A That's why I wrote it on the slip.

Q What did Kelly have to do with this?

A He is the one who met Mike Molina.

Q That's all he did?

A Yes. He is the one who introduced me to Mike.

MR. WILLIS: What is the answer?

THE COURT: He is the one who introduced me to Mike, as I understood it.

Q When did you meet Mike?

A In June of '73.

Q How many times have you seen him since then?

A Since I was arrested?

Q Since June of '73.

A Four times.

Q Where?

A The grand jury hearing, twice in the showroom and once outside his building.

Q Prior to the time you met him, how many times did you talk to him on the telephone?

A Twice.

Q Did you call him or did he call you?

A Once I called him and -- three times I spoke to him on the phone -- no, twice. Twice on the phone. I called him once and Bobby called once.

Q Bobby called him once and then you talked; is that correct?

A Yes.

Q That was the time that you told him to deal with you and not Bobby; is that right?

A Right.

Q Bobby was right in the room?

A Right.

Q At that time, when you had a conversation with Mike, did you offer to bring Mike any narcotics that night?

A No.

Q Did you ever offer to bring Mike any narcotics the same night you talked with him?

A Bring him what, the coke?

Q Cocaine.

A No, because I didn't know who he was. I wanted to meet him.

Q You certainly wouldn't talk to someone over the phone who you hadn't met and offer to bring him narcotics

right away, would you?

A No.

Q You were actually introduced to him over the phone with Bobby right there; is that right?

A Right.

Q Did you have a conversation with him at that time concerning the price of cocaine? That is, over the telephone.

A Yes.

Q What did you say to him and what did he say to you?

A He asked me about what the price would be per ounce and I told him it would be between $900 and $1,000 an ounce and he said he would be interested in buying a lot. This ounce would be for his buddy to give to his friends and stuff in Long Island and Queens and Brooklyn. They had a lot of money and they were looking to buy coke.

Q Was this conversation before or after you gave the price list to Bobby?

A I believe it was after.

Q In that conversation did you refer to the price list?

A I don't remember if I referred to it.

Q Again, that conversation was the one where you were introduced by Bobby over the phone?

A Yes.

Q Who introduced you to Mike?

A Nobody. I went up to the showroom myself to meet him.

Q Who told you his name was Mike Molina?

A Bobby.

Q When you got to the showroom did you introduce yourself to him?

A Yes.

Q What name did you tell him?

A Harry Sharp.

Q What name did he tell you?

A Mike.

Q Did he give you a last name?

A I don't know if he did. I don't remember.

Q You gave him your phone number?

A No.

Q Did he have your phone number?

A Yes.

Q What time of the day did you meet Susan Marcus?

A It was in the afternoon.

Q After twelve, after three, after four?

A It was sometime after one and before five.

Q Between that four-hour gap?

A Right.

Q Is that correct?

A Yes.

Q How long did it take you to go to New York and return to New York that day?

A It all took place, me going to New York, meeting Susan Marcus and going back between one and five.

Q You were back in New York before five o'clock?

A Back in New Jersey.

Q I'm talking about New York. What time were you back in New York?

A With Susan Marcus?

Q Yes.

A I was back about 8:30.

Q It was dark?

A About eight o'clock, 8:30; yes, it was dark.

Q What day of the week was it, do you remember?

A No.

Q Did it get dark while you were in New Jersey?

A Yes.

Q And you came back by car?

A Yes.

Q Whose car?

A My girlfriend, Dorothy.

Q What kind of car was it?

A Falcon.

Q And the car you drove from one store to the other was Mr. Mayet's car or was it his father's car?

A I don't know whose name it is in.

Q It is an old station wagon?

A It is about '66, I think.

Q Six or seven years old, about?

A About that.

Q That is the only car you have ever seen Mr. Mayet drive?

A No.

Q What other car have you seen him drive?

A A Dodge.

Q What year?

A I don't know. About '68, '69, '67.

Q You don't know who owned that car?

A He said his father.

Q Mr. Mayet worked quite hard in that store, didn't he?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Did you have any conversation with Susan as to the quality of the cocaine on that day?

A The quality? You mean the quality of the coke she bought?

Q Yes.

A Yes, I did.

Q You did?

A Yes.

Q Did she ask you about it?

A She asked me if it was good.

Q After she asked you, you gave her an answer; is that correct?

A Yes.

Q Did she ask you what amount of cocaine she was going to buy?

A Did she ask me what amount she was going to buy?

Q Yes.

A I don't understand the question.

Q Did she ask you before you went to New Jersey, "How much cocaine am I getting"?

A She said to me she was buying a quarter of an ounce.

Q That is the first you knew about it?

A I didn't know anything about it until I went to Mike's showroom and he introduced me and she said she wanted to buy coke.

Q Did you discuss the price with her?

A Yes.

Q What did you tell her?

A She said she had $250 and that she needed money, so she gave me $240.

Q $240, not $235?

A $240.

Q When did she give you the money?

A On the stairway going up to the factory.

Q You remember that?

A Yes.

Q You don't remember what day of the week that was?

A No, I don't.

Q Do you remember what you were wearing that day?

A No.

Q Do you remember what Susan Marcus was wearing?

A Yes.

Q What?

A She had on black boots, a black skirt and a black shawl.

Q Was it warm out?

A It was pretty warm.

Q Do you know where Mr. Kelly works?

A Now?

Q No, I am interested only in late June, early July of

1973.

A Yes.

Q Where was that?

A He just changed jobs.

Q Did he work for Garcia Ltd. at any time that you know?

A Yes, I remember he worked there.

Q Is that a Cuban-run organization?

A Yes.

Q It is in the clothing line?

A Yes.

Q That is in 1411 Broadway?

A No.

Q Where is it?

A That is in North Bergen.

Q Where?

A North Bergen. He worked in a showroom, though, at I think 37th Street.

Q Near 1411 Broadway?

A 37th Street, that is two blocks away. He worked, I think, on the east side. I'm not sure. He wasn't working for Garcia then.

Q But he worked for Garcia before that?

A Yes.

Q What conversation did you have with Susan Marcus on the way over to New Jersey?

A Just talk.

Q Did you ask her if she was married or single?

A No.

Q Did she ask you?

A No.

Q Did you have any discussion about girlfriends or friends?

A We were talking about Mike.

Q Just Mike?

A Mostly.

Q You didn't mention your girlfriend to her at all, did you?

A Yes, I did when we went home. I told her I had to get her car. We went down to the house to get her car.

Q On July 9 -- a few days before that you had a call from Bruce?

A The last call I had from Bruce was before I got arrested, Sunday, the day before.

Q That was to confirm a previous call you had; is that right?

A Yes.

Q When was that call?

A The previous Thursday or Friday.

Q Two or three days before the Sunday?

A Yes.

Q Was it near any holiday that you remember?

A It was after the Fourth of July.

Q You made a deal with Bruce; is that correct?

A Well, we confirmed the deal on the phone, yes.

Q Did Bruce ask you how good the narcotics were?

A No, because --

Q Yes or no, did he?

A No.

Q Did you tell him how good they were?

A No, he had the taste from Mike.

Q Bruce had the taste?

A I guess, because he didn't ask about it, he just said it was good.

Q Bruce said that he had already tasted the narcotics; is that correct?

A He said to me that it was good. Whether he tasted it or not, I don't know. But he said to me that it was nice, I like it, I want the three ounces.

Q That was the sample you gave to Bobby; is that correct?

A Right.

Q How much did you get paid for that sample?

A He didn't pay me anything. He lent me $10 and I gave it to Candy.

Q Who lent you $10?

A That is the night Candy came to the apartment and asked me if I had any money.

Q You gave that sample to Bobby?

A Right.

Q And Bobby gave it to Mike?

A I guess.

Q And Mike gave it to Bruce?

A I don't know if Mike gave it to Bruce.

Q Did you ask Bruce whether he tasted that sample at all?

A He said to me the stuff was good, he wanted the three ounces, so I presumed he like it so I presumed he tasted it.

Q On July 9 you came to the store supposedly to see Candy; is that correct?

A No, that is not.

Q You came to the store to report to work?

A No, I didn't work in the store. I worked in the factory.

Q Did you go to the factory?

A Yes.

Q To see Candy?

A To see Candy about the deal, right.

Q And he wasn't there?

A No.

Q Then you went to the store; is that right?

A No.

Q Where did you first see Candy that day?

A At the store.

Q You testified that Maria came to the store first and then Candy came; is that right?

A They came kind of at the same time, maybe a few minutes apart. I wasn't really exactly sure who came first.

Q Didn't you testify this morning --

A I did say that, but I'm not really positive who came first.

Q But you remember your testimony this morning?

MR. BUCHWALD: Objection, your Honor.

THE COURT: I will permit it.

A Yes, mostly.

Q And this morning you testified that Marie came first, Candy came three or four minutes afterward?

A Yes, I did say that.

Q As soon as Candy came in and he saw Marie he had an

argument?

A He had an argument with Al.

Q As soon as he saw Marie?

A Yes, he had an argument as soon as he came in. Not an argument, just words.

Q Do you remember these questions and these answers before the grand jury on July 18, 1973, page 7:

"Q. That is the store we have been talking about?

"A. Yes.

"Q. Prior to the time that Marie came to the store, did Candy then come to the store?

"A. Yes.

"Q. While you and Candy were at the store, did you then observe Marie come into the store?

"A. Yes."

Do you remember those questions and those answers?

A No.

Q You don't remember them?

A No.

Q Did you discuss this case with the United States Attorney during lunch?

A No.

Q Did you discuss it with any federal officer during lunch?

A Today you mean?

Q Yes.

A I discussed two questions.

Q You discussed the question as to who came in the store first; is that correct?

A No, not that.

Q You discussed it at lunch today; is that correct?

THE COURT: Discussed what?

MR. STONE: This case.

A Yes.

Q And you discussed the testimony you gave this morning with some federal officer at lunch; is that correct?

A Yes.

Q When you arrived at that showroom to meet Mike in late June of 1973, who was there when you arrived?

A The first time or the second time?

Q How many times did you go to the showroom?

A Twice.

Q How many times did you go to the showroom and meet Susan Marcus?

A Once.

Q I am talking about the time you met Susan Marcus. When you got to the showroom, who was there?

A There was Mike, his partner, and three customers,

I think. His partner was selling them clothes.

Q When you got there, Susan Marcus was not there yet; is that correct?

A Right.

Q How long afterwards did she come?

A About ten minutes.

Q You are very clear in your mind that you got there before Susan Marcus?

A I think so.

Q Did you discuss that with the agents over lunch?

A No, we didn't talk about that.

Q Did you tell Bruce or Mike how much money you wanted for the three ounces?

A Bruce or Mike?

Q Yes.

A Yes.

Q How much did you tell them?

A I told Mike if he takes the one ounce like he said originally, it would be about $1,000. If he took the three the price would be about $750 for each.

Q Yet you gave him a price list where it only was $900 an ounce, in writing?

A Yes.

Q And you raised it to $1,000?

A It was originally $1,000 first off.

MR. STONE: May I have Government Exhibit 2, please?

MR. BUCHWALD: Yes, sir.

Q I show you Government Exhibit 2 and ask you if that is your handwriting?

A Yes, it is.

Q When did you put the $900 on that?

A This is when I made up the list.

Q You never put $1,000 on it, did you?

A When I first made the deal with Mike I told him $1,000 an ounce. He wasn't sure if it was going to be one or three ounces.

Q You told Bruce and Mike that you needed $2,250 for three ounces; is that correct?

A Yes.

Q And did they tell you that their man was there with $2500?

A I don't think they said $2500.

Q Nobody said $2500; is that correct?

A I think in the diner Greg said it.

Q In the diner, what sum of money was mentioned?

A I think it was $2500.

Q Did you ask him how come he was bringing $250 more?

A I thought the guy had a lot of money. Because they

said he owned a big furniture store. Or a drug store.

Q When Candy came to the store that morning, did he have any conversation with you concerning the fact that he was going to New York to purchase lumber?

A No, not that day.

Q Not that day?

A No.

Q But other days he mentioned going to New York and purchasing lumber; is that correct?

A On other days, yes; I went with him once or twice.

Q And he went to a lumber yard on 42nd Street near Eleventh Avenue; is that correct?

A It was closer to Twelfth. No, it was further down towards the dock.

Q 38th Street?

A It is on 42nd Street but closer towards the river.

Q 12th Street?

A Down where the West Side Highway is.

Q How far from the Market Diner?

A About three blocks, I think.

Q So you knew before July 9, 1973 that Candy Mayet had business near the Market Diner?

A Yes.

Q And you knew that on July 10, 1973 when you had

discussions with the federal agents; is that correct?

A Yes, I did.

Q Did you know that there was a sales room of the Fiesta showroom in Manhattan where his father worked?

A A what?

Q A sales room, an office.

A His father's accounting office, you mean?

Q Yes, that was in New York.

A Yes.

Q And they did business for Fiesta Shoes in that office.

A I never seen that business.

Q But you have been to the office?

A Yes.

Q Where is that?

A I believe 53rd or 54th, around that area.

Q Seventh Avenue?

A I think so.

Q You knew Mayet came to New York to go to that office on occasion?

A Yes.

Q You carried these three ounces of cocaine at one time or another on July 9; is that correct?

A Yes.

Q It wasn't that heavy, was it?

A No.

Q It didn't take three people to carry three ounces, did it?

A No.

Q When you carried the narcotics you made a point of hiding it from open view; isn't that true?

A It was in a bag.

Q You didn't want to take it out and wave it at people, did you?

A No. I just carried the bag.

Q You just carried the bag.

How old are you?

A Twenty-six.

Q Do you know how old Mr. Mayet is?

A About twenty-four.

Q Younger than you are?

A Twenty-four, I think.

Q In your 26 years, other than that one time on July 9, have you ever seen cellophane packages of what appeared to be narcotics sticking out of anyone's pocket?

A No.

Q You know people make a deliberate attempt to hide narcotics from other people; isn't that a fact?

MR. BUCHWALD: Objection.

THE COURT: I will sustain the objection.

Q You testified that after you came down from Michael's showroom, back into the coffee shop, you then made a phone call or talked on the telephone to the person who was supposed to be Bruce's partner; do you remember that?

A Yes. Bruce called him and I spoke to him.

Q When Bruce gave you the phone did he tell you his name was Greg?

A No. I think he told me in the showroom.

Q Before the telephone call?

A Yes.

Q So you knew who the person's name was before you talked to him on the phone; is that correct?

A Yes.

Q Do you remember this question and this answer on page 9 of the grand jury minutes:

"Q. On the occasion that he called his partner, did you then have a conversation with the partner over the telephone?

"A. Yes, sir.

"Q. Were you introduced or did you know a name by then of the partner?

"A. No.

"Q. You were simply just talking to him over the telephone?

"A. Yes."

Do you remember those questions and those answers?

A No.

Q You don't remember?

A I don't.

Q Is your memory better today or was it better on July 18, 1973?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q After your arrest, did you make a phone call to Mr. Mayet?

A To the store.

Q At that phone call did you ask him to get some money up fast?

A No.

Q What conversation did you talk to him about?

A When?

Q After your arrest.

A I called up the store and asked for him.

Q Did he answer the phone?

A Yes.

Q What did you say to him and what did he say to you?

A I made out like it wasn't him on the phone.

Q Did you tell the agents it was him?

A No.

Q But by that time you had already agreed to cooperate with the federal government; is that correct?

A No.

Q They gave you the right to make a phone call?

A They told me to call up Candy.

Q Who mentioned Candy's name?

A I did.

Q And they told you to call him?

A They asked me who the guy was I was with. Bruce told them I was with this other guy, I guess.

Q And you told him that he was your boss who owned a shoe store; is that correct?

A Yes.

Q What conversation did you have with him at that time?

A Who?

Q Candy.

A On the phone?

Q Yes.

A No conversation at all, just like, "hello, is Candy there, no, okay." I hung up.

Q You didn't leave any message?

A I said I would call back.

Q Did you say who it was?

A I said it was Harry.

Q Do you know the name of the person you talked to?

A The second time?

Q How many times did you call?

A Twice.

Q Who did you talk to the second time?

A Al.

Q Did you leave a message with Al?

A No, I just said I would get back to him.

Q On both calls were the federal agents standing right next to you?

A Yes.

Q Were they listening in on an extension?

A No.

Q You are sure of that?

A Yes.

Q Which agent was next to you?

A The guy who busted me and this other agent. And there was another guy, three of them.

Q And they didn't hear the call at all?

A They had a tape recorder on.

Q They had it recorded?

A Yes.

Q And they told you what to say?

A Yes.

Q What did they tell you to say?

A To arrange to meet Candy to give him the money.

Q In other words, they wanted you to set someone up right away; is that right?

A Not set him up, just to give him the money.

Q And you made a phone call with someone and offered the money and he refused?

A I didn't offer him any money.

Q But the agents told you to offer him the money.

A But I didn't do it.

Q Weren't you cooperating with the Government at that time?

A No.

Q When did you start cooperating?

A After I had a talk with Candy.

Q When was that?

A That was after I got out of jail and he got out of jail.

Q And at that conversation did you threaten to testify against him unless he paid you a certain sum of money?

A No, I did not.

Q But as a result of that conversation you then decided to cooperate with the Government?

A Right.

Q Did you give any statement implicating Candy before you got out of jail?

A Yes.

Q When was that?

A Within two or three days after I got busted, within three days.

Q Was it the next day?

A I think it was the day after I came out of jail.

Q It was after you got out of jail when you first gave a statement to a government agent; is that right?

A It was after my bail was arranged.

Q When you got arrested did you have occasion to discuss this case with a United States Attorney before you saw a magistrate and had bail fixed?

A I don't remember if I saw him. I don't think so.

Q You got arrested what time of the day?

A About three, 3:30, three.

Q Did you stay in jail overnight?

A Yes.

Q And the next morning did you come to this building?

A Yes.

Q Did you stay at West Street, 427 West Street, the federal detention headquarters?

A Yes.

Q That morning did a federal agent pick you up in a car or a van and bring you to this building?

A Yes.

Q When you came to this building were you brought before a United States Attorney?

A Yes.

Q Was that United States Attorney Mr. Walter Phillips?

A Who?

Q Phillips.

A No, I think it was Mr. Nesland.

Q On that day, before bail was set, did Mr. Nesland ask you any questions?

A Yes, I believe he did.

Q Did you give him any answers?

A Yes.

Q Did you implicate Candy Mayet at that time?

A I don't remember if it was then or after.

Q You are not sure?

A No. I only talked to him for about five minutes. He asked me if I was going to cooperate and I said I don't know, I wasn't sure. I wasn't sure of anything. I didn't get

a phone call or nothing. Then he said we will go to the hearing now at the magistrate's and when you come back down I want you to come to the office with the agent and you can talk to me. And I said all right.

Q When were you arrested?

A July 9.

Q When did you get out on bail?

A I think it was the 10th.

Q When did you have this conversation with Nesland?

A I believe on the 10th.

Q And you did not implicate Mr. Mayet at that time; is that correct?

MR. BUCHWALD: That is a mischaracterization of the testimony, your Honor.

THE COURT: Yes, I think that is a fair objection. Sustained.

MR. STONE: I will withdraw the question.

THE COURT: Ask him what he said.

Q What did you say to Mr. Nesland before you posted bail or were arraigned on July 10, 1973?

A I don't remember what I exactly said to him.

Q When for the first time do you remember giving any government agent or United States Attorney a statement concerning the facts of this case as you are testifying to now?

A After I was arraigned.

Q It was after your arraignment?

A Yes, I believe so.

Q At least a day or two after?

A I don't know exactly when.

Q Do you remember what day of the week you got out on bail?

A I think it was a Tuesday.

Q Who was the first official of the United States Government that received your statement?

A I guess the federal agents.

Q Did they write it down?

A I don't know.

Q When was that?

A When I got arrested.

Q At that time you didn't mention Mayet at all, did you?

A Yes, I did.

Q So you were cooperating then?

MR. BUCHWALD: Objection.

THE COURT: Yes, I think that is a characterization. I will sustain the objection.

Q Which agent did you give a full statement to?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Yes, to "full statement."

Q Which agent did you give a statement to?

A There were about six.

Q What time was this and where was it?

A When you say statement, you mean just talking to them? Is that a statement? They talked to me in a parking lot right outside the Market Diner.

Q Did you tell them then everything that you have told the Court today?

A No.

Q Did they then take notes at any time as to what you said?

A In the parking lot, no.

Q What statements did you give them in the parking lot?

A They asked me who was on the corner.

Q What did you tell them?

A I said Candy.

Q What other questions did they ask you?

A They asked me if I had a gun. They asked me all kinds of questions. I don't remember exactly but it had to do with drugs.

Q Did they ask you where you got the drugs?

A Yes.

Q What did you tell them?

A I told them my partner.

Q Did you tell them your partner's name?

A I don't remember if I told them that same day.

Q How many times have you -- Well, who is your partner?

A I have no partner now.

Q Then wasn't it Bob Kelly?

A No, not at that time.

Q Who was your partner?

A Candy.

Q Did you ever refer to him as your partner to anybody?

A No, but it was just a figure of speech.

Q Did you ever introduce him to anybody as your partner at any time?

A No.

Q Never?

A No.

Q When you went into the shoe store with Susan Marcus, how did you introduce him?

A I just said this is my friend Candy.

Q Your friend?

A Yes.

Q You never used the word "partner" to Susan Marcus, did you?

A No.

Q When for the first time did you mention Candy's name to the federal agents in relation to narcotics?

A Either the day I got arrested or the next day.

Q And you say you decided to cooperate after you had a long talk with Candy after both of your were arrested; is that right?

A Yes.

Q When was that?

A It was I think the following week after he got out of jail.

Q Do you remember when he got arrested?

A A couple of days after I did.

Q Where did this conversation take place?

A Jeno's parking lot in West New York.

Q Did you call him to meet you?

A He called me at the house.

Q Were you still working and selling shoes at that time?

A No.

Q Had you been fired?

A No, not fired. I just quit. I told him -- I wasn't going back there to work.

Q He didn't fire you on the way to New York that day,

did he?

A No.

Q He called you and you were not working at that time; is that correct?

A Right.

Q When he called you and you got out of jail?

A No.

Q How long was it that you remained unemployed?

A After that?

Q Yes.

A About three weeks.

Q Where did you start working then?

A I was paving roads again and I was working -- I started working part-time at my friend's poodle salon.

Q In that conversation you had in Jeno's parking lot, isn't it a fact that you asked Candy Mayet for money?

A No, I didn't.

Q Did you threaten to testify against him if he didn't give you money?

A No. He called up the house when I was in jail and said if I needed money or a lawyer he would get it.

Q Who did he talk to?

A My girlfriend.

Q What is your girlfriend's name?

A Dorothy Magnusson.

Q Where is she now?

A Work.

Q She can come to court?

A I don't know.

Q What?

A I don't know.

Q Who posted your bail?

A My sister.

Q Do you know what kind of bail she posted?

A She signed a paper.

Q She didn't have to put up any money, did she?

A If I leave she has to pay $5,000.

Q And if you don't leave she won't have to pay a penny; is that right?

A That's right.

Q That bail was arranged on July 10 of 1973; is that correct?

A Right.

Q When was this conversation with Candy, can you give us a date?

A No. I would imagine it was the night I got busted.

Q I'm talking about the one in the parking lot.

A Sometime within, say, ten days after I got out of

jail. I don't remember the date.

Q Sometime between the 10th and the 20th of July?

A Right.

Q Was it before or after you testified in the grand jury?

A I don't know.

Q You couldn't even tell us if it was before or after; is that right?

A I don't know.

Q You don't know?

A Right.

Q But you do remember this morning the Government saying that you first testified in the grand jury on July 18; is that correct?

A The grand jury was July 18.

Q That is eight days after your arrest.

THE COURT: Nine days, isn't it?

MR. STONE: Since you were released on bail, July 10.

THE COURT: All right.

Q How tall are you, Mr. Shapiro?

A 6 feet 2.

Q You were with Miss Marcus for a considerable period of time on one day; is that correct?

A On the day she bought the coke, yes.

Q How tall is Miss Marcus?

A I don't know.

Q Would you say she is taller or shorter than Mr. Mayet?

A I don't really know.

Q How tall would you say Mr. Mayet is in comparison to you?

A About 5 foot 6.

Q How tall is Miss Marcus?

MR. BUCHWALD: Objection.

THE COURT: He already answered that question. He said he didn't know.

Q While Susan Marcus was in the store on that day in June, did she have any conversation with Mayet concerning the cocaine?

A I don't remember.

Yes, she did.

Q They discussed how good it was?

A Yes.

Q And you remember that conversation?

A Yes, I do.

Q How many times had you been with Mr. Mayet to that lumber yard?

A A few times.

Q Three, five, six, seven?

A I can't say exactly. A few times.

Q And he bought quite a bit of lumber?

A Yes.

Q And he did his own construction work in the store?

A Somebody else did.

Q And he did some of it?

A Yes.

Q Did you ever help him?

A No.

Q You were strictly a salesman?

A Yes.

Q Are you addicted to anything?

A Cigarettes.

Q That's all?

A Yes.

Q How about the use of alcohol?

A No.

Q Did you ever tell the Assistant United States Attorney, Mr. Nesland, that you were addicted to alcohol?

A No.

Q Did you ever tell Mr. Nesland, the Assistant United States Attorney, at the time of your arraignment, that

you drank a lot of alcohol?

A I said I drink. I didn't say a drank a lot, not addicted. I didn't say I was addicted or an alcoholic.

Q Did you ever see the statement that you gave to the Assistant United States Attorney on July 10, 1973?

A No.

Q Before you came to testify in this case, did Mr. Buchwald or any federal agent ever show you your statement of July 10, 1973?

A No.

Q They showed you your grand jury minutes?

A Yes.

Q They let you read it?

A Yes.

Q And on November 1, 1973, you were called to the grand jury to testify about what you knew about Susan Marcus; is that correct?

A That is right.

Q Was it before or after that that you called her up for a date?

A After.

Q At that time did you tell her you had testified against her?

A I called her up to find out if she was a cop.

Q If she were what?

A If she was a cop. I wanted to make out I was friendly with her to find out if she was a cop.

MR. WILLIS: I'm sorry, Judge; a cop?

THE COURT: That's what I thought he said. To find out if she was a cop, an undercover agent.

Is that it?

THE WITNESS: Yes.

Q You mentioned her name to other federal agents, didn't you?

A Yes.

Q Did you ask any of the other federal agents whether she was a police officer or a policewoman?

A Yes.

Q What did they tell you?

A No comment. They don't make any comments. They don't say yes or no.

Q Who did you discuss that with?

A With nobody in particular.

Q When?

A I don't know exactly when.

Q When you asked her for a date, what did she say?

A She said call me back, she had to leave. I had to call her back, but later on I didn't call her.

Q She never told you she was married and couldn't go out with you?

A When I first met her -- no, she didn't tell me the first day I met her. She told me she was living with this guy. She didn't tell me exactly if she was married or not. Then she told me she was married.

Q When you called her for a date and she told you to call her back, she wasn't concerned that she was married?

THE COURT: I can't permit that. He doesn't know.

Q She didn't tell you she was married at that time, did she?

A When I called her for the date?

Q Yes.

A Yes.

Q And she didn't refuse to go out with you?

A I wanted to see her that afternoon and she said no.

Q Incidentally, before you were arrested did you actually turn the bag of suspected cocaine over to the agents before you were arrested?

A No.

Q In other words, you didn't even have a chance to put your hands on that package, did you?

A No.

Q You were arrested right away?

A When we got into the men's room and I went over to the side and I said, "Okay, let me have the package," I just went like this --

Q And he arrested you?

A Yes.

Q It is your testimony that you never touched that package?

A Right.

Q And the only person that could have touched that package, according to your testimony, is either Candy, Marie or both; is that right?

A And the federal agents.

Q And did you tell the federal agents that you never touched that package?

A I don't remember if I ever told him or not.

Q Did he appear to be careful in handling that package?

A As soon as he said I was under arrest, he was gone.

Q You didn't see how he handled that package?

A No.

MR. STONE: May I have a minute, your Honor?

THE COURT: All right.

(Pause.)

Q Mr. Shapiro, did you ever bring a girl by the name of Linda to the factory?

A Yes.

Q Did Linda work for you as a prostitute?

A No.

Q Did you ever have any argument with Mr. Mayet concerning any girls?

A About what?

Q Any argument with Mr. Mayet at any time about any girls that you were dating or he was dating.

A Not that I remember.

Q Have you ever been treated for any mental disorders?

A No, sir.

Q Mr. Shapiro, did you feel funny walking in with a girl's pocketbook into a diner?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Have you ever carried a girl's pocketbook before?

A No, sir.

MR. STONE: May this be marked.

(Government 3506 marked Defendant Mayet Exhibit A for identification.)

Q Mr. Shapiro, I show you Defendant's Exhibit A for identification and I ask you if between July 10, 1973 and today you have ever seen that piece of paper?

A No.

Q Look in the second page and see if your answer will be the same.

A I don't remember this.

Q You don't remember it?

A No.

Q You don't remember seeing it?

A It looks like notes that Mr. Nesland took about what I said. I don't see any signatures on it. I don't remember seeing it before.

Q Do you remember how long your conversation was with Mr. Nesland at that time?

A A couple of hours, maybe.

Q A couple of hours?

A Yes.

Q That was the day after your arrest?

A Well --

Q I am talking about the conversation of July 10, 1973.

MR. BUCHWALD: Objection, your Honor.

THE COURT: I will permit it.

A I didn't talk to him for a couple of hours. I had to keep leaving the room and he got a phone call --

Q How long were you in his office?

A I don't know exactly; on and off, a couple of hours.

Q Do you remember what time you got there and what time you left?

A I don't.

Q Did you leave in the morning?

A I don't remember.

Q What time did you get out on bail?

A Five o'clock at night.

Q That was on the 10th?

A Yes.

Q What time did you see the judge? Or the magistrate, to set bail?

A In the morning.

Q Before lunch or after lunch?

A After lunch, I believe.

Q After lunch?

A I was in the court about ten o'clock but by the time they got to me it was one, two o'clock.

Q Between ten and one did you see Mr. Nesland?

A I saw him for about a half hour before one of the offices of the magistrate.

Q What time was that?

A About 9:30.

Q Did you see him any time before 9:30?

A No, I don't think I saw him until the next day.

Q Which would have been the 11th?

A Yes.

MR. STONE: No further questions.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Shapiro, you referred to a Mr. Mogul in your testimony, did you not?

A Yes.

Q Who was Mr. Mogul?

A He is the legal aid supervisor over there in Park Row.

Q Was he your attorney?

A Yes.

Q Did you hire Mr. Mogul?

A No, sir.

Q Was he appointed for you?

A Yes.

Q Do you know whether he is appointed by the court?

A I don't know. He is appointed I think by the magistrate.

Q Mr. Shapiro, how many times did you appear in front of the grand jury?

A Twice.

Q What was the procedure in front of the grand jury? Were you asked questions?

A Yes.

Q Did you give answers to the questions?

A Yes.

Q Were you ever asked a question like, "Would you just tell us everything you know"?

A No.

Q You were asked specific questions?

A Yes.

Q And you gave specific answer?

A Yes.

Q Do you recall whether you were ever asked a question about what you said to Maria or Maria said to you at the La Puma Shoe Store on July 9?

A I don't remember.

Q You testified about some phone conversations with Mike.

A Yes.

Q Did you ever tell Mike that you were anxious to meet him?

A Yes, I told him I wanted to go over to the showroom to meet him so I would know who I was talking to.

Q I would like you now, Mr. Shapiro, to focus on the

date of your arrest of July 9, 1973; is that correct?

A Yes.

Q Where were you arrested?

A The Market Diner.

Q Where in the Market Diner?

A In the men's room of the Market Diner.

Q How many agents, if you recall, were in the men's room of the Market Diner when you were arrested?

A Three, I believe.

Q Where did they next take you?

A They took me outside to the parking lot up the street, which would be on 44th.

Q Did any of them talk to you in the men's room?

A No, they just said that we are going to walk out of the diner and don't try to run.

Q Did any of them talk to you in the parking lot?

A Yes.

Q Did you talk to them in the parking lot?

A Yes.

Q Were you standing out there in the parking lot?

A Yes, I was.

Q Where did you next go from the parking lot?

A We left the parking lot and went back to the first coffee shop.

Q Did you go into a car?

A Yes.

Q With agents?

A Yes, I went with two agents.

Q Did any of the agents talk to you in the car?

A Yes.

Q Did you talk to them?

A Yes.

Q Where did you go in the car?

A Back to the first coffee shop.

Q This is the first coffee shop --

A Where we went to meet Bruce's friend who wasn't there.

Q That is the coffee shop that you testified you had gone to with Bruce and Candido Mayet and Marie Aguilar?

A Yes.

Q Did you actually go into the coffee shop?

A Yes.

Q With the agent?

A Yes.

Q Did they talk to you there?

A Before we went in they said that we will go into the coffee shop and sit down.

Q They talked to you then?

A Yes.

Q Did you talk to them?

A Yes.

Q Did they ask you questions?

A No, they just more or less told me what to do and I did it.

Q Then you left the coffee shop with the agents?

A Yes.

Q Where did you go next?

A Up to the headquarters, I guess.

Q To the agents' headquarters?

A Yes.

Q Were there agents there who asked you questions?

A Yes.

Q Did you talk to the agents?

A Yes.

Q Did you answer any of the questions?

A Yes.

Q Incidentally, during this period of time, from the time in the men's room when you were arrested until the time in the agents' headquarters, did you have a notebook? Were you taking notes?

A No, sir.

Q Were you taking notes of what the agents asked you

at which place?

A No, sir.

Q Were you taking notes of what you said at which place?

A No.

Q But they spoke to you at their headquarters; is that correct?

A Yes.

Q And you spoke to them?

A Yes.

Q Do you remember approximately what time it was when you were arrested?

A Yes, it was about 3:30, a quarter to four.

Q Do you know what time it was when you, after you went into the car and over to the coffee shop and back up to the headquarters, do you know what time it was when you got up to the headquarters?

A No, I don't. It was near the evening, about six o'clock.

Q Do you recall how long you stayed at the headquarters?

A Yes. Until it was later in the night.

Q At the headquarters did they take a picture of you?

A Yes.

Q Were you fingerprinted?

A Yes.

Q When you were finished at the headquarters, where did you go?

A To the West Street jail.

Q Did agents take you to the jail?

A Yes.

Q In a car?

A Yes.

Q Did they talk to you in the car from the headquarters to the jail?

A Yes.

Q Did you talk to them?

A Yes.

Q Then you got to the jail?

A Yes.

Q You spent that evening in the jail?

A Yes, I did.

Q The next morning did the agents come back for you?

A Yes, about nine o'clock.

Q They picked you up at the West Street prison?

A Yes.

Q And at West Street did the agents talk to you?

A No.

Q Did they put you in a car

A They picked me up and brought me back here in a car.

Q They drove back where?

A To the United States Court House.

Q In the car, did they speak to you?

A Yes.

Q Did you speak to them?

A Yes.

THE COURT: Do we need this minutia? If we do, then we are prepared to sit here and take it. It just seems to me that it is not necessary.

Q To this courthouse; is that correct?

A Yes.

Q Were you taken before an Assistant United States Attorney?

A When we first got here, yes.

Q That was Mr. Nesland?

A Yes.

Q Did you speak with Mr. Nesland?

A Yes, I think.

Q Excuse me?

A I'm pretty sure I did.

Q Was he taking notes?

A I think so. Yes, I think he was.

Q Were you then taken before a United States magistrate?

A Yes.

Q Bail was set?

A Yes.

Q Your sister came?

A No.

MR. STONE: I covered all this in cross-examination.

THE COURT: If it has to be repeated it will just have to be repeated. What difference does it all make?

Q During any of these conversations that you had with the agents or with the Assistant United States Attorney, did you take notes of what you were asked and what you said?

A No.

Q Did you have additional conversations, in the following days and weeks, with either of the Assistant United States Attorneys and/or agents?

A Yes.

Q Did you take notes at that time of what you said or what they asked?

A No.

Q Did you keep a diary which indicated the dates on which you made statements or spoke with agents?

A No.

Q You have stated, have you not, that you pled guilty

in this case?

A Yes.

THE COURT: Yes, he has. Do we need to repeat that? Everybody knows he has pleaded guilty. He said it at least six times. There has got to be a limit to this trial.

Get on with it.

Q Do you know who the judge is who will sentence you?

THE COURT: Yes, I am the judge. We know that. I said that.

MR. BUCHWALD: No further questions.

RECROSS EXAMINATION

BY MR. WILLIS:

Q You had a girlfriend by the name of Dorothy that you lived with, sir?

A At the time, yes.

Q Isn't it a fact that Dorothy took you to New York City for psychiatric treatments, sir, because you were having lapses of memory? Just yes or no.

A No.

Q Does the address Park Avenue ring a bell or refresh your memory to having gone to see a psychiatrist for treatment?

A No.

Q Did Dorothy ever recommend that you get psychiatric treatment?

THE COURT: I won't permit that. It doesn't make any difference whether she did or she didn't.

Q Do you understand today and comprehend fully what is going on in this courtroom?

A Yes, I do.

MR. WILLIS: No further questions.

THE COURT: Mr. Stone.

RECROSS EXAMINATION

BY MR. STONE:

Q Mr. Shapiro, you don't want to go to jail, do you?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Would you lie to stay out of jail?

THE COURT: I will forbid that question, too.

MR. STONE: No further questions.

THE COURT: You can make the argument to the jury. Mr. Buchwald?

MR. BUCHWALD: No further questions.

THE COURT: Thank you, Mr. Shapiro.

(Witness excused.)

THE COURT: Madam Foreman and ladies and gentlemen of the jury, suppose we take a few minutes now for our afternoon break.

(The jury left the courtroom.)

MR. WILLIS: Judge, when I return from the men's room, I would like to be heard on a question of law on striking the testimony of Susan Marcus as it refers to Maria Aguilar pursuant to the letter I received. The only way to tie her testimony in is through Harry Shapiro, your Honor, in this trial, and the testimony of Mr. Shapiro. He having finished his testimony, I would like to be heard on striking the testimony of Susan Marcus as tied in to Maria Aguilar in this case.

THE COURT: All right. Why don't we do that after I have excused the jury. It will give you a better opportunity and also it won't keep the jurors waiting.

MR. WILLIS: Yes, sir.

MR. STONE: I would like the Government to have Mr. Nesland available as a defense witness in line with the testimony of Mr. Shapiro.

THE COURT: All right. I am sure he is in the building. If he isn't on trial I am sure he will be produced.

Let's take a few minutes.

(Recess.)

(In open court; jury present.)

THE COURT: Next witness.

MR. BUCHWALD: The Government calls Bruce Roth.

B R U C E R O T H , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Roth, do you know an individual by the name of Michael Lorber?

A Yes, I do.

Q Did you know him in the spring and summer of this year?

A Yes.

Q Do you know where he worked at that time?

A Yes.

Q Where was that?

A 1411 Broadway.

Q That is in Manhattan?

A Yes.

Q Do you know the name of the place he worked?

A Bonnie & Clyde.

Q Do you know an individual by the name of Bobby Kelly?

A Yes, I do.

Q Where did you first meet Mr. Kelly?

A Up at Michael Lorber's showroom.

Q Do you recall when this was?

A I met him on the 5th, or rather the 2nd of July.

Q Was that a Monday?

A Right.

Q How do you know that?

A Because I was off from work on Monday and that is when I went up to meet him.

Q Where did you meet him?

A I met him in Michael Lorber's showroom.

Q Had you ever met Mr. Kelly before then?

A No.

Q Had you ever attempted to meet Mr. Kelly before then?

A Yes, I did.

Q When was that?

A On or around the 25th of June.

Q Was that a week before --

A It was a week before, on a Monday, too, I think.

Q On that occasion, on the 25th of June, had you gone to the showroom?

A Yes.

Q And this was 1411 Broadway?

A Yes, sir.

Q But you had not met Bobby Kelly on that occasion?

A No.

Q On July ? when you arrived at the showroom, was Michael Lorber there?

A Yes.

Q Was Bobby Kelly there?

A No.

Q Bobby Kelly did arrive at some point?

A About an hour after me.

Q Did you know what he looked like before you met him?

A No.

Q Were you introduced to him?

A Yes, I was.

Q Who introduced you?

A Michael Lorber.

Q Did you have a conversation with Bobby Kelly at that time?

A Yes.

Q What did he say to you and what did you say to him?

A We had a conversation about cocaine and I had a conversation with him about the price and the quality of it and if he can make it available to me.

Q What did he say to you?

A He said he could.

Q Did he say anything about the quality of the cocaine?

A He said it was good.

Q Did he say anything about where the cocaine came from?

A No. He just said it came from -- I don't remember if he said his partner or he said it came from somebody he

knew.

Q Where did this conversation take place?

A This took place in the hall on the 17th floor of 1411 Broadway.

Q Is that the hall outside the showroom?

A Yes.

Q Did you arrange at that time to speak with Bobby Kelly again?

A Yes, I was supposed to speak to him on the following Thursday which would have been July 5. I was to contact him.

Q Did you contact Bobby Kelly on that date?

A Yes, I did.

Q Was that person to person or on the telephone?

A On the telephone.

Q On that occasion what did you say to him and what did he say to you?

A I asked him if he set the deal up yet, if he spoke to his people, and he said that he didn't but that he would get in touch with me when he did.

Q Later on that same day, did you have another conversation concerning cocaine?

A Yes, with Michael Lorber. He contacted me.

Q At that time did he give you a phone number?

A Yes, he did.

Q Did you call that phone number?

A Yes.

Q What happened when you called that phone number?

A I introduced myself to Harry Shapiro, said that I was a friend of Michael Lorber and Bobby Kelly.

Q At that time did you know the full name of the individual you were speaking with on the phone?

A No.

Q What name did you know him as during that phone conversation?

A Harry.

Q Had you ever met Harry before this?

A No.

Q During this phone conversation, what did you say to Harry and what did he say to you?

A I introduced myself and said I was a friend of Michael Lorber and Bobby Kelly and has anybody spoken to him about me. And he said yes. I said I was interested in three ounces of cocaine. He asked me if I knew the price and we discussed, me and Bobby discussed the price already. I told him I knew the price and he asked me how much I was interested in and I said three ounces of cocaine. And he said when would I want it, and I said I would want it on Sunday -- on Monday, the following Monday. He wanted to do it the next

day, but I couldn't arrange it until Monday.

Q Did you tell him on the phone that you individually wanted to purchase the cocaine?

A No, I told him I had a partner.

Q You told him you had a partner?

A Yes.

Q Did you tell him the partner's name at that time?

A No.

Q During that conversation you agreed to meet; is that correct?

A Not in that conversation. I was to call him back on Sunday night.

Q On that Sunday night?

A Right, the 8th of July.

Q Did you call him back on Sunday night?

A Yes, I did.

Q On that occasion what did you say to Harry and what did Harry say to you?

A I asked Harry if he would be ready to go tomorrow with the cocaine and he asked me if I had the money, and I said yes. I asked him where he wanted to set it up and he said in Michael's showroom. We set it up for the next day at about 1:30.

Q That is the time you agreed on during the Sunday

night conversation?

A Right.

Q That next day, Monday, July 9, did you go to the showroom?

A Yes, I did.

Q Did you see Harry at the showroom?

A No, he wasn't there.

Q Was Michael Lorber there?

A Michael was there.

Q Did Harry at any point arrive at the showroom?

A Yes, he arrived about two hours after me.

Q He came into the showroom?

A Yes.

Q When he came into the showroom was he with anyone?

A No, he was alone.

Q Had you ever met Harry Shapiro before this?

A No.

Q You had only spoken with him on the phone?

A Right.

Q On this occasion who introduced you to Harry Shapiro?

A Michael Lorber.

Q After you met Harry Shapiro in the showroom, did you go anyplace?

A Yes, we walked down the hall to the elevators.

Q You walked out of the showroom?

A Out of the showroom to the elevator.

Q To the elevator?

A Yes.

Q At the elevator did you meet with anyone else?

A Yes, two other people.

Q A male or female?

A Male and female.

Q Do you see either or both of those people in the courtroom today?

A Yes.

Q Would you point to the male who you met?

A Over there on my left.

MR. BUCHWALD: Let the record reflect that the witness has identified the defendant Candido Mayet.

Q Will you point to the female?

A On my right.

MR. BUCHWALD: Let the record reflect that the witness has identified the defendant Maria Aguilar.

Q At the elevator, had you ever seen either of these two individuals before?

A No.

Q Did Harry introduce either of these individuals to you at this time?

A He introduced Candy to me.

Q He introduced Candy to you?

A That is the name I knew him as.

Q What about the woman?

A No.

Q He didn't introduce the woman at that time?

A No.

Q At the elevator, was there any discussion where you were going?

A Yes, I said my partner was downstairs in the Squire Luncheonette. It was on the corner of 40th Street, I think. I am not too sure which corner it was.

Q What is the name of it?

A Squire Luncheonette.

Q Did anybody say anything to you?

A Harry did. He asked me why wasn't your partner up in the showroom the way we planned. And I said because he was paranoid about doing it up there with all those people.

Q At this time the four of you were up next to the elevator?

A Yes.

Q What, if anything, did you do after that?

A We took the elevator down.

Q By "we," you are referring to the four of you?

A Yes.

Q When you got downstairs, what, if anything, did you do?

A We went to the Squire Luncheonette.

Q Where was that in relation to 1411 Broadway?

A It was right on the corner, right across the street on the corner.

Q Did you go into the Squire Luncheonette?

A Yes.

Q All four of you?

A All four of us.

Q Then what happened?

A We went there and my partner wasn't there. Me and Harry -- Candy and Maria, they sat down and me and Harry went looking for my partner. We figured maybe he was walking up and down the street and we didn't find him.

Q When you got into the Squire Luncheonette, did you tell the others that your partner wasn't there?

A Yes.

Q Did Harry know who your partner was, as far as you knew?

A No.

Q And you left the luncheonette?

A With Harry Shapiro.

Q What did you do with Harry Shapiro at that time?

A We went looking for my partner.

Q Did you find your partner?

A No.

THE COURT: Mr. Roth, wasn't it kind of awkward having this young lady along, that you didn't know who she was or what the connection was?

THE WITNESS: She wasn't introduced to me and I didn't ask any questions at that point.

THE COURT: How did you know her name was Maria?

THE WITNESS: I found out later on.

THE COURT: At that time you didn't know?

THE WITNESS: At that time I didn't know what her name was.

THE COURT: All right.

Q Then what happened after you walked around with Harry Shapiro?

A We went back to the luncheonette.

Q Did you rejoin the other two individuals?

A Yes.

Q Then what happened?

A I made an explanation that my partner must have gone back to work and that I could contact him by telephone at his office.

Q Then what happened?

A Candy and Maria were eating and we waited for them to finish eating. We went across the street to the telephone booths on the corner where I called my partner.

Q When you went to the phone booth who was with you?

A The four of us were together.

Q And you then made a phone call?

A Yes.

Q Who in fact did you call?

A The name?

Q If you know the name.

A Greg Korniloff.

Q Did you at that time know who Greg Korniloff was?

A Yes, I did.

Q Who was Greg Korniloff?

A An agent for drug enforcement.

Q What did you say to Greg Korniloff and what did he say to you on the phone?

A I asked him where he was, that he was supposed to wait for me. And he said he was waiting for about two and a half hours, two hours, and he figured nothing was happening so he went back. I told him that everybody is here and would you like to speak to Harry. I didn't use his name then. I said, would you like to speak to one of the guys that is here,

his name is Harry. And he said he would.

Q Then what did you do?

A I put Harry on the telephone.

Q Was this a public phone booth?

A Yes.

Q Where was it, if you recall?

A Right on the corner, across the street from the Squire.

Q Were you then able to observe whether or not Harry actually spoke on the telephone?

A Yes, he was speaking on the telephone.

Q Did there come a time when he finally hung up the phone?

A No, he gave me back the phone.

Q Did you speak to him some more?

A Yes.

Q Then what happened?

A We made arrangements to meet at the Market Diner on 42nd Street and Eleventh Avenue.

Q Did the phone conversation end?

A Yes.

Q Was it a phone booth?

A It was open. Just stands on the corner.

Q Then you walked out of that telephone area?

A Right.

Q Did you say anything to the others at that point?

A I said we are supposed to meet my partner at the Ma-ket Diner on 42nd Street and Eleventh Avenue.

Q Then what happened?

A Harry went over to Candy and Maria and he spoke with them. I didn't hear what they were saying. Then I walked over and it seemed like he took -- one of them, I don't remember who, took a parking ticket for their car to pick up, wherever they parked it, and that is when they handed it to the girl and I heard somebody say "Maria, you take the car."

Q At that time did you see anything else?

A Yes. That is when Maria handed Harry the pocketbook, a pocketbook that she was carrying.

Q She handed Harry the pocketbook?

A Candy the pocketbook, excuse me.

Q I show you what has previously been marked as Government Exhibit 3 for identification and ask you if you can identify this item.

A That is the bag.

Q Are you certain of that?

A Positive.

Q Then what happened?

A Then the girl left, I guess to get the car. I am not sure of that. We hailed a cab on the corner and went to the Market Diner.

Q By "we," who are you referring to?

A Me, Candy and Harry.

Q Did you get into a cab?

A Yes, we did.

Q Where did the cab take you?

A To the Market Diner.

Q While you were in the cab, who was holding the leather bag?

A Candy.

Q Did you arrive at the Market Diner?

A Yes, we did.

Q What did you do when the cab arrived at the Market Diner, if anything?

A I paid the cab driver and we were getting out of the cab and Candy handed Harry the bag.

Q What, if anything, did you do?

A I got out of the cab with Harry. We walked over to the front of the Market Diner.

Q Where was Candy at this time, if you know?

A He walked around the corner. I don't know where he went.

Q He walked around the corner?

A Yes. Like on the side of the diner, I guess.

Q You and Harry went somewhere?

A To the front of the diner to wait for Greg.

Q Did Greg finally arrive?

A Yes, about ten minutes after we did.

Q What happened after Greg arrived?

A I made the introductions. I introduced Harry to Greg and Greg to Harry, and it was a hot day so we went into the luncheonette and sat down at a counter.

Q Then what happened?

A Harry and Greg were having a conversation. They got up and they went downstairs and I was still seated at the counter.

Q You were still seated at the counter?

A Right.

Q Mr. Roth, have you ever been convicted of a crime?

A Yes.

Q What is that?

A Violation of the narcotics laws.

Q What did that involve?

A Amphetamines and barbiturates.

Q Did you have a co-defendant in that case?

A Yes.

Q Who was that?

A Michael Lorber.

Q Have you been sentenced in that case?

A Yes.

Q When were you sentenced?

A I think it was July 21.

Q If I said August 21, would that refresh your recollection?

A August 21.

MR. WILLIS: I object. He already answered, Judge.

THE COURT: I know, but it is a date which is capable of exact proof. If the witness had made a mistake it is perfectly proper to point it out to him. There can't be any argument about it.

MR. WILLIS: What is the date, then, Judge?

THE COURT: August 21, I think.

Is that right, Mr. Buchwald?

Q 1973?

A Yes.

Q Are you presently serving a sentence in connection with that?

A Yes.

MR. BUCHWALD: No further questions.

CROSS-EXAMINATION

BY MR. WILLIS:

Q Mr Roth, those are not the clothes you wear in prison, are they?

A No.

Q Who brought you your change of clothes?

A My family did.

Q So you have been sentenced to jail; correct?

A Correct.

Q On a violation of the narcotics laws; is that right?

A That's right.

Q And with a co-defendant of Michael Lorber; is that right?

A That's right.

Q And you were also a business associate of his?

A No, I wasn't.

Q Did you work in the garment industry?

A No.

Q What position did you hold?

A Hair stylist.

Q A what, sir?

A Hair stylist.

Q In Manhattan?

A In Brooklyn.

Q How did you know Mr. Lorber?

A I knew him from the neighborhood.

MR. BUCHWALD: I believe the name is Lorber, your Honor.

THE COURT: Yes, I think it is.

Q Lorber, is that the correct pronunciation?

A That's it.

Q How long was your sentence?

A A year and a day.

Q When are you coming up for review of that sentence, sir?

A Review?

Q Yes.

A Or parole?

Q The first opportunity for parole.

A January.

Q January. Where are you serving your time?

A In Springfield, Missouri.

Q Springfield, Missouri; isn't that a government hospital, sir?

A Yes, sir.

Q It is not a prison, is it?

A It is a prison camp.

Q What are you doing in the government hospital?

A I am part of the camp attached to it. I work there.

Q Have you been hospitalized?

A No.

Q Are you receiving any treatment?

A No.

Q Are you receiving any drug therapy?

A No.

Q Were you ever addicted to drugs?

A No.

Q What type of drugs did you take?

MR. BUCHWALD: Objection.

THE COURT: He said he wasn't addicted to drugs.

MR. WILLIS: It doesn't mean he doesn't take them. He was convicted.

THE COURT: I think he was convicted of selling them, I assume.

THE WITNESS: Possession.

Q When you possessed them, did you also take them?

A No, not those.

Q Not what?

A I didn't take them drugs.

Q How about cocaine?

A I never used it.

Q Heroin?

A Never.

Q What drugs did you take?

A The most I have ever done was smoke grass.

Q What were you convicted of specifically, possession of what?

A Of amphetamines and truanol powder.

Q Half a pound?

A Half a pound.

Q You possessed it with Mr. Lodner?

MR. BUCHWALD: I believe the name is Mr. Lorber.

MR. WILLIS: The U.S. Attorney mispronounced my client's name, it is Aguilar.

Q You understand if I misprounced Lodner and Lorber, it is the same person?

A Yes, sir.

Q You were partners on this venture in this half pound of truanol powder; correct?

A Yes, sir.

Q You were going to split the profit 50-50?

A Yes, sir.

Q Are you aware that your former partner has testified in this courtroom?

A Yes, I am.

Q Have you spoken to him?

A About this case, no.

Q Have you spoken to him in the last three or four days?

A When I see him, yes.

Q When you see him? You are in prison, aren't you?

A Yes.

Q When would you see Mr. Lorber?

A During the course of the day.

Q He comes to prison to visit you?

A He is in prison, too.

Q You are both now residing at the same penitentiary, West Side Penitentiary?

A Yes, sir.

MR. BUCHWALD: It is West Street, your Honor.

THE COURT: It is the federal detention headquarters and the address I think is 427 West Street.

Q You are both in the same penitentiary?

THE COURT: It is not a penitentiary.

MR. WILLIS: Detention center.

THE COURT: That's right.

Q You are both in the same detention headquarters?

A Yes, sir.

Q You see each other how long each day?

A Not very long because we are in different parts of

the building. He works one job and I work another job there.

Q Five minutes, ter minutes?

A Maybe about 15, 20 tops.

Q Did you see the gentleman yesterday?

A Yes, I did.

Q Did he tell you he testified in this courtroom?

A Yes, he did.

Q Did he tell you something about the nature of the questions that were asked of him?

A No.

Q Were you curious?

A No.

Q You didn't want to know anything about this trial?

A I was instructed not to ask questions or speak about the trial.

Q Who told you that?

A My lawyer.

Q Who is your lawyer?

A Mr. Gottesman.

Q When did Mr. Gottesman tell you that?

A When I was brought back to West Street from Springfield. He told me not to have any contact with Michael Lorber.

Q Not to have any contact with him; is that correct?

A Not to speak about the trial.

Q What is correct, not to speak about the trial or not to have any contact?

A Not to speak about the trial.

MR. BUCHWALD: Objection, asked and answered.

THE COURT: I will permit it.

A Not to speak about the trial.

Q Did you talk about the trial?

A No.

Q Did Michael?

A No.

Q You spent 15 minutes yesterday and you were not even curious?

THE COURT: I won't permit that question.

Q You didn't, but how about Mr. Lorber?

A Could you repeat that?

Q You were instructed not to discuss this trial by your attorney; correct?

A Yes, I was.

Q How about Mr. Lorber, did he talk to you about the trial?

A No, he didn't.

Q What did you talk about?

A I asked him how he was doing; small talk.

Q For fifteen minutes?

A 15 minutes, could be three minutes at one point, two minutes at another point, a couple of minutes here, a couple of minutes there. We don't see much of each other. He sleeps in one part and I in another part, and the jobs are different.

Q You have been there about how many days now?

A 25.

Q How many days has he been there?

A He has been there almost two months.

Q Do you see each other every day?

A Sometimes we don't.

Q How often, every other day?

A Maybe.

Q For approximately 15 minutes?

A Approximately.

Q It is your testimony that in the course of approximately 25 days you have never discussed this case?

A No, I never have. I will tell you honestly, I really don't discuss too many things with Michael because it is like bad memories for me, and I try to stay out of his way and that's the best way I can answer you.

Q Michael has bad memories for you?

A The case that we had together. I had rather not

discuss anything with him.

Q You don't trust Michael?

A I didn't say I didn't trust him.

Q Who approached you, or, in the alternate, why are you here?

THE COURT: I won't permit that.

MR. WILLIS: Strike it.

Q Who asked you to come to give testimony in this courtroom?

A The Government.

Q When did they ask you?

A I don't remember the exact date but it must have been when I came back from Springfield, I guess.

Q When did you come back from Springfield?

A About [illegible] days ago.

Q Did you know why you were being brought from Springfield to New York?

A At the time, no.

Q You just found out that you were being shipped?

A Right.

Q When you arrived in New York, what happened?

A A few days later I was called down to the federal courthouse and I found out that I was testifying in a case.

Q Without talking to the U.S. Attorney, without

speaking to the FBI, you are told you are testifying in a case; is that the way it worked?

MR. BUCHWALD: Objection as to the characterization and the misstatement of the evidence.

THE COURT: Yes, I think it is objectionable as to form. I will sustain the objection.

Q You came from Springfield to New York; is that right?

A That's right.

Q Before you ever appeared in a federal courthouse before any judge, were you told you came because you are going to be used as a witness?

A No, I was not.

Q Then how did you find out that you were going to be a witness?

A They have a court sheet that they hand out every night at West Street and I saw my name on it one night and I was picked up, brought down here by bus, and I was called to the U.S. Attorney's office where I was told I was going to testify.

Q He told you you were going to testify?

A I was brought back here to testify. I don't know if I'm using the exact words that the U.S. Attorney used.

Q Try to be as precise as you can, Mr. Roth.

THE COURT: If there are any instructions to be given, I will give the instructions. Just ask the questions.

Q You were confronted or brought into a room with the United States Attorney; correct?

A Yes.

Q He told you the reason you are there is to come forth and give testimony in a trial?

A Yes.

Q Did he tell you what trial?

A Yes, he did.

Q Did he tell you anything about the case, what he wanted you to do?

A No. Just to tell the truth.

Q Did you ever learn how this United States Attorney knew to call you from Springfield to New York about this case? How did he pick you out?

A I was involved in it.

Q Did you ever find out how he knew you were involved in it?

A I never asked.

Q Do you know now who gave your name?

A No.

Q You weren't curious?

A No.

Q Did you ever ask Michael?

A No. Why should I ask Michael?

Q Did it ever occur to you that somebody somewhere some time dropped the name Bruce Roth to the United States Government? Did that ever occur to you?

A No.

Q Didn't you ever ask yourself how the U.S. Government got Bruce Roth's name connected with this case?

A I knew how they got Bruce Roth's name connected with the case.

Q How?

A I was part of the case.

Q So you knew why you were being brought in?

A Not really. All I knew was that I had papers saying go back to West Street, and that was it.

Q Your involvement with the federal agents, in particular Mr. Korniloff, when did your involvement with Mr. Korniloff begin?

A I guess on the morning of July 9.

Q Had you been arrested on your drug charge?

A Yes.

Q Is it fair to say that after the time of your arrest on your drug charge you agreed to cooperate as best you could with the United States Government?

A Yes, I did.

Q And the reason for your attempting to cooperate was to help yourself?

A Yes.

Q Did you help yourself?

A I can't answer that.

Q You are in prison; is that right?

A Yes, I am.

Q What was the maximum prison term you could have received?

A I don't know on that.

Q Did your lawyer ever tell you?

A No.

Q There came a time when you did sit down with Mr. Nesland; isn't that a fact?

A Yes.

Q And you told Mr. Nesland everything you knew about this case, didn't you?

A Yes.

Q And he took notes, did he not?

A Yes, he did.

Q Do you remember watching him take notes?

A Yes.

Q Did you ever read over or look at the notes he took

to make sure they were correct?

A No.

Q Do you remember telling Mr. Nesland that Maria handed Candy a leather handbag?

A Yes.

Q Do you remember that particular item as being an afterthought?

A No.

MR. WILLIS: May I have this marked for identification, please.

MR. BUCHWALD: Government 3504?

MR. WILLIS: Yes.

(Defendant Aguilar Exhibit A marked for identification.)

Q When you went and spoke to Mr. Nesland, did he tell you the importance of your testimony?

A He told me that I would have to testify.

Q Did he tell you why he wanted you to testify?

A Because I was a witness.

Q Did he zero in on any particular thing that might be important to him in preparing this case?

A No. He didn't zero in on anything.

Q Did he mention to you that it would be important for you to tie Maria Aguilar into this case?

A He just asked me what I knew and I told him.

Q Did he mention to you, yes or no, whether it was important for you, coming all the way from Springfield, to tie this girl into this case?

A No, because I wasn't in Springfield at the time.

Q You were in the detention center?

A I was in the streets at the time.

Q When you gave the statement?

A Yes.

Q You hadn't been sentenced yet?

A Yes.

Q You were sentenced?

A No.

Q You were pending sentence in the federal court?

A Right.

Q Did Mr. Nesland once again tell you how important it would be for you to tie Maria into this case?

A I don't remember.

Q You don't remember now?

A No.

Q How about looking at that four-page document. I know it is not your handwriting, but do you remember watching Mr. Nesland write down the information you gave him? Do you remember that?

MR. BUCHWALD: The witness has already testified that he has not seen the notes, that he did see Mr. Nesland taking notes.

THE COURT: Sustained.

Q Where were you when Nesland was taking the notes, right next to him?

A Across the desk.

Q Were you watching him write?

A Not particularly.

Q At any time.

A I saw him write.

Q Can you identify this paper and this writing as that which you observed Nesland doing on that occasion?

You look at it and take your time.

A This is a photostat.

Q But does that appear to be the same writing and the same paper that you used when you gave the information to Nesland?

A He used yellow paper. I didn't look at his handwriting so I couldn't tell you.

Q Can you explain to me, if you know, why on the left-hand side away from everything else is inserted --

MR. BUCHWALD: Objection.

THE COURT: Let the question be finished.

Q -- "Maria handed Candy a leather pocketbook"? It is not with everything else on the paragraph.

MR. BUCHWALD: Objection.

THE COURT: The objection is sustained. It is a wholly improper question. This is not this witness' statement. Drop the line of inquiry and let's get on to something proper.

Q Did you ever tell Nesland that you saw Maria hand that pocketbook to Candy?

A Yes, I did.

Q Or was it suggested to you?

A No. I told him.

Q Did the U.S. Attorney lay the groundwork for you?

A No, he didn't.

Q He knew about the case before you got there, didn't he?

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

Q He knew about the case before you got there?

A Yes, he did.

Q As a matter of fact, when you appeared before the grand jury, Mr. Nesland knew all about the case then, didn't he?

A Yes, he did.

Q And he asked you specific questions, didn't he?

A He asked me general questions. He asked me to run down exactly what happened, and I did. He questioned me from there.

Q He just said to you before the grand jury, just tell this grand jury everything about this case?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Or did Mr. Nesland ask you specific questions one after the other before that grand jury?

A Specific questions.

Q So you just didn't have a chance to run on through the whole story, did you?

THE COURT: Stop it. Don't ask questions like that anymore in my courtroom. Let's get on with this.

Q Before you went into the grand jury, did you meet with Mr. Nesland?

A I don't remember if I met with him. I know upstairs before we went into the grand jury I was in the waiting room.

MR. BUCHWALD: Can we have a clarification as to the time?

THE COURT: I assume it is at the time that the grand jury testimony of this witness --

MR. WILLIS: July 18.

THE COURT: I assume so; is that right?

MR. WILLIS: July 18, yes.

Q Mr. Roth, where did you wait before you went in before the grand jury?

A There was a waiting room.

Q And in that waiting room did you see anybody else connected with this case, sir?

A Harry Shapiro was there.

Q Who else?

A Bobby Kelly and Michael Lorber.

Q Was there anybody in that room with the three of you?

A Yes, the agents were there.

Q Did you have any conversation with any of these people?

A I was sitting with Agent Corniloff and Michael.

Q Did you see Susan Marcus there?

A No.

Q Were you going to say something?

MR. BUCHWALD: Objection.

MR. WILLIS: I don't understand the objection.

THE COURT: There is no question pending.

Q On July 9 you attempted to set up a deal, did you not?

A Yes.

Q A deal which is going to hopefully help you and your partner; correct?

MR. BUCHWALD: Objection as to the characterization.

THE COURT: These questions are just argumentative and calls for a conclusion and opinion. Can't we ask him what he did, what he said, what happened, what he observed?

Q Did you set a deal?

THE COURT: That is just an argumentative question. Did he set a deal. What does "set a deal" mean?

MR. WILLIS: Did you set up a purchase of cocaine.

THE COURT: I won't permit the question. Ask him what he said and to who and what he did.

Q Did you speak with the federal agents in an effort to set up a purchase of cocaine?

MR. BUCHWALD: Objection, your Honor.

THE COURT: We will be here for three or four months if we don't go on.

Can you answer that, Mr. Roth?

Can you repeat the question?

(Question read.)

A Yes.

Q July 9 you are up in the showroom; correct?

A Correct.

Q Candy appears, some girl who is not introduced

to you; is that right?

A At first Harry Shapiro appeared.

Q At one time or another Shapiro, Mayet and this girl here who is not introduced to you, are standing there?

A Yes.

Q Did this girl involve herself in any conversations about cocaine when you were present?

A No.

Q Did you talk directly to her about what she was there for or what this whole thing was about?

A No.

Q Did you know her?

A No.

Q Did she participate in any way with any of the guys in your presence setting up this deal?

THE COURT: I won't permit that. That calls for the ultimate conclusion. One of the ultimate conclusions for the jury. Did they participate in it. He testified, as I understood him, that she was there. You have just asked him to decide an issue. I can't allow that.

Next question.

Q You talked to Harry Shapiro about it, didn't you?

A About what?

Q The cocaine.

A Yes.

Q When you talked to Harry Shapiro, was Maria involved in that conversation at all?

A No, she was not.

MR. BUCHWALD: Objection as to the use of the word "involved."

THE COURT: It is very difficult to go on unless you allow some objectionable questions.

Can you say?

THE WITNESS: Can I say what?

THE COURT: Whether she was involved. Was she involved in a sale of cocaine?

MR. WILLIS: That wasn't the question, and I'm sorry for the confusion.

Was she involved in a discussion about the sale of this cocaine?

THE WITNESS: No.

Q You went downstairs to the street, did you not?

A Yes, we did.

Q Maria and Candy went to a restaurant?

A Yes.

Q You went with Harry Shapiro?

A Yes.

THE COURT: I think we will have to stop here.

Madam Foreman, ladies and gentlemen of the jury, we will stop and resume tomorrow at 9:30 and sit until one o'clock. Don't discuss the case among yourselves or with anybody else, please.

(The jury left the courtroom.)

(Witness temporarily excused.)

THE COURT: Mr. Willis, what is the point you wanted to make to me about Susan Marcus?

MR. WILLIS: I would like to have a letter received from the U.S. Government marked for identification purposes.

THE COURT: All right.

MR. WILLIS: I will have it marked later, Judge.

THE COURT: It is dated November 29 and I have a copy of it.

MR. WILLIS: It is directed to myself and Mr. Stone and it says the subject matter of Susan Marcus' testimony will concern an instance --

THE COURT: I have read it.

MR. WILLIS: The Government put on Susan Marcus and said that they would tie up her testimony as being relevant to my client, that is, that my client participated in a sale and that that sale is relevant to this one as a prior similar act. What in fact occurred was that Susan Marcus said she went to the Puma Shoe Store, she waited in a little room with

Harry Shapiro and that Mr. Shapiro appeared to make a phone call and while on the phone talking, the name Maria was mentioned. She thought she heard the name Maria mentioned, and that is all she could remember. Not Maria Aguilar and not Maria the girl here, because she can't identify the girl here. Just the name Maria.

The Government puts Harry Shapiro on and Harry Shapiro testifies that he didn't even know Maria's number and he didn't call Maria on the phone when he was in the room with Susan Marcus. And he never used the phone in connection with any call to Maria. So their own witnesses contradict each other's direct testimony, your Honor.

THE COURT: That is not any grounds to strike the testimony.

MR. WILLIS: They haven't tied in Maria Aguilar to the sale of any of this cocaine to Susan Marcus.

THE COURT: It doesn't make any difference who Harry Shapiro recalled. If he used the word "Maria," that is perfectly reasonable testimony. The jury can infer that they are talking about Maria Aguilar. There aren't any other Maria Aguilars running around.

MR. WILLIS: That is not true, your Honor.

THE COURT: I don't think, frankly, that the point has any bearing. You have presented it ably and it is your

duty to present all the points, but I am afraid, Mr. Willis, I can't accept that.

MR. WILLIS: I will reserve further argument until after the Government's case is over.

THE COURT: All right. I always want to give you a full opportunity, but I don't think that a question of conflict between two witnesses is to be resolved by me as a matter of the admissibility of evidence. That is for the jury. Nothing that I pass upon at any time, any of my rulings, have nothing to do with arguments that you can make properly to the jury.

Of course this is an argument that can be made to the jury, but I don't see that the Susan Marcus testimony is inadmissible simply because there is a difference between what she said Harry did. She thought he called Maria's number and used the word "Maria." Actually, he says he called from O'Maras Shoe Store and asked for Maria's number, and they declined to give it, but they said that they would have her call him and she did it.

MR. WILLIS: That is the incident that occurred in the shoe store involving the July 9 matter. I am talking about the Susan Marcus testimony being relative to Harry Shapiro's direct and cross-examination statements concerning the name Maria being mentioned in the presence of Susan Marcus.

If Harry Shapiro says, the second Government witness refutes the testimony of their first witness, which was tenuous to begin with, only mentions tangentially the name Maria as possibly having been mentioned in a telephone conversation, neither one of them being able to tie anything in to Maria Aguilar, where does she sit on the basis of trying to show --

THE COURT: What do you say Shapiro testified as to his telephone call when Susan Marcus was in the shoe store?

MR. WILLIS: That he did not call Maria and he did not know Maria's phone number to even place the call.

THE COURT: But I still don't understand why that would make Susan Marcus' testimony inadmissible. Suppose the jury should determine to believe Susan's testimony instead of Shapiro?

MR. WILLIS: What she says is she thinks. That is the most superficial presentment that you can get to even give a jury, Judge.

THE COURT: We don't want to question that. Whether the case should or should not go to the jury, that is not the question. We are at the question of whether the Susan Marcus testimony, if I understand you, should be struck out.

MR. WILLIS: As concerning Maria Aguilar.

THE COURT: I don't think it is up to me to pass on

which you say they are inconsistent, Shapiro and Susan. If they are, for all I know the jury may elect to believe Susan on this point and disbelieve Shapiro. We are only talking now about an evidence point. We aren't talking about anything else. Of course, you can properly argue to the jury that they are inconsistent and they shouldn't believe either one of them, if you like. I think I will deny the motion to strike for the reasons indicated.

Have you given Mr. Roth's 3500 material?

MR. BUCHWALD: That was given over before he began his direct testimony.

Let the record reflect that at the conclusion of Harry Shapiro's testimony, the following 3500 material with reference to Bruce Roth was turned over the both defense counsel:

Item 3504-A, Mr. Roth's grand jury testimony of July 18, 1973, consisting of eight pages. 3504-B, which consists of notes of a conference dated July 9, 1973 held between the Assistant United States Attorney and Bruce Roth consisting of four pages.

(Trial adjourned to December 7, 1973, at 9:30 a.m.)

UNITED STATES OF AMERICA

v. 73 CR. 702

CANDIDO MAYET and
MARIE AGUILAR a/k/a MARIA

New York, N.Y.
December 7, 1973
9:30 a.m.

Defendants

Trial resumed.

- - -

(In open court; jury not present.)

THE COURT: I got a telephone call from my chambers, and my law clerk answered the telephone. It appears that it was the office of Mr. Willis calling. The office of Mr. Willis reported that he would be late and also that Miss Aguilar can't be here today because she is presumably sick. Why Mr. Willis is late, I don't know. Perhaps he was waiting for the defendant. I have been waiting on Mr. Willis.

Is Mr. Mayet here?

MR. STONE: He is not, your Honor. Sometimes they have traveled together for transportation purposes.

THE COURT: Might he be coming with Mr. Willis?

MR. STONE: He did meet Mr. Willis in Mr. Willis' office on one occasion and they came together.

THE COURT: Maybe they are coming together. If it turns out Miss Aguilar is sick, I will have to send a doctor to examine her right away.

Mr. Buchwald, you can alert your office to think of a doctor. She apparently lives in New Jersey. Maybe you will have to get the United States Attorney in New Jersey. You must have her home address, and I will want to send a doctor to examine her immediately. You might be thinking of the mechanical arrangements while we are waiting for Mr. Willis.

MR. BUCHWALD: Yes, your Honor.

(Recess.)

THE COURT: Mr. Willis, what is the situation?

MR. WILLIS: I received a call at 4 o'clock this morning at my house from Miss Aguilar informing me that she was very sick. She had been sick at counsel's table yesterday and the day before, your Honor. Yesterday she had a fever. I requested that she come to court, knowing this is not a long trial and I didn't want to hold it up. I waited for her call back. She called me and she is running 102, 103 temperature, and quite sick. She is not here this morning, Judge. I would think she has had a virus for a couple of days and hasn't taken care of it. I think if she gets medical attention, which I told her, over the weekend, I am sure she will be here Monday morning, Judge.

THE COURT: Mr. Willis, what is her home address?

MR. WILLIS: That is a good question, Judge. I

don't mean to be facetious at all.

I have three addresses, and I am not sure which one is accurate. I have two telephone numbers where she can be reached. The addresses I know of are: 615 Palisades Avenue, Cliffside Park, New Jersey. I think --

MR. BUCHWALD: That is the address which Mr. Castillo testified about.

MR. WILLIS: I am almost positive she has moved to possibly 6001 Polk Street, West New York, New Jersey.

If your Honor wishes, I might be able to reach her at a phone number to verify her address, or at least where she is now.

THE COURT: Is it feasible to consider finishing with Roth? After all, she was here for his direct examination and I don't imagine that you have a great deal more of cross.

MR. WILLIS: I don't, Judge.

THE COURT: Because we were at it yesterday. Do you think that is feasible?

MR. WILLIS: I don't see -- The only problem is if and when her name is mentioned, counsel likes to consult with his client to get their opinion or get notes from them.

THE COURT: What does the Government think? Is it worthwhile trying to finish Roth and then stopping, or would it be better to excuse the jury right now?

MR. BUCHWALD: I think there would be something to be said with finishing with Mr. Roth. All of the other witnesses that we anticipate are really witnesses of a different type, which would all be here, and we can expedite matters on Monday. I don't feel strongly one way or the other.

THE COURT: Roth is not actually from out of town. He isn't awaiting to go back to his business or anything. He is in custody. He will just be in West Street for the weekend.

MR. BUCHWALD: That is correct.

THE COURT: I am inclined to think it would be better to excuse the jury and try again on Monday.

MR. WILLIS: I apologize, Your Honor.

THE COURT: Mr. Willis, I don't think you have anything to apologize for.

MR. WILLIS: At least for being late.

THE COURT: All right. I suppose that is connected with her illness.

MR. WILLIS: Yes, it is, Judge.

THE COURT: Suppose we bring in the jury and I will excuse the jury until 9:30 Monday morning; and after the jury has been excused, let's consider telephoning Miss Aguilar, because I will have to send a doctor to examine her. Not that I suspect bad faith, but, Mr. Willis, I have

been at this almost eleven years and it is just routine. I do it in every case. I have to have the protection of an independent doctor's visit.

Let's get the jury in, then.

(In open court; jury present.)

THE COURT: Good morning, members of the jury.

Madam Foreman, ladies and gentlemen of the jury, it is gratifying to take note this morning that you were all here promptly. I am sorry that, for reasons with which the jurors need have no concern, we were not able to start promptly. And also for reasons which I think good and sufficient, but which again the jury need not be concerned with, we aren't going to be able to have a session this morning. I am going to have to excuse the jurors until 9:30 on Monday morning. I hope we can finish the case, even so, on Monday.

As we separate over the weekend, again, don't discuss the case with anybody else. We will meet here on Monday morning at 9:30, until which time, the jurors are excused. Thank you very much, you may retire.

(The jury left the courtroom.)

THE COURT: Mr. Willis, why don't you try to get Miss Aguilar on the telephone now and just verify what her address is. And if she is in an apartment building, get the

number of the apartment.Let's do that. And when you have accomplished that, let me know and we will come back.

MR. WILLIS: Certainly, Judge. I couldn't even get a little sympathy concerning her sickness.

THE COURT: I don't usually tell the jurors that. You can understand the Government never wants me to tell them that.

MR. WILLIS: Certainly I understand, your Honor.

THE COURT: All right.

(Recess.)

THE COURT: Mr. Willis, what is the report?

MR. WILLIS: I spoke to Maria, your Honor, and she is in bed waiting for her own family doctor to come. Her address is 6001 Polk Street, West New York, Apartment 9, and she will be there.

THE COURT: Have you made a note of that?

MR. BUCHWALD: I have made a note of the address, your Honor.

THE COURT: Will you arrange promptly to supply me the name of the doctor who can be appointed to go and examine her?

MR. BUCHWALD: Yes, your Honor. We are trying to ascertain the procedure now. Mr. Mukasey is downstairs.

THE COURT: I shouldn't think the doctor should

have to wait to my signing the order before you alert him to make his preparations and plans. Ask him if he would report to me through you, orally, as soon as the examination has been made. And ask him then to confirm his oral report by letter. Please ask him to mail it today. We ought to get that tomorrow or Monday.

MR. WILLIS: If I may, your Honor, I also instructed Miss Aguilar to call me Sunday afternoon and let me know how she is feeling, so that I will have some idea, of course, by early Monday morning what her status is.

THE COURT: All right.

I guess that completes our business for the moment about Miss Aguilar.

Mr. Stone, you had something on your mind?

MR. STONE: Yesterday there was a discussion with the United States attorney about the return of the 3500 material which they had given us. I had no objections to returning it yesterday but I asked that they would give it back to me so I could prepare my summation, not quoting it but certainly referring to it. We did not order the minutes in this case and the 3500 material could refresh your memory in allowing us to sum up. I can't see why they would be prejudiced in giving it to us before summation.

THE COURT: It's hard for me to see, frankly, what

value it has in summation.

MR. STONE: One is the grand jury minutes where I read certain portions of it in certain questions and answers to the witness. That was page 7.

THE COURT: I don't see any reason why you shouldn't be given that.

MR. STONE: The other were some notes I might have made in referring to that in my cross-examination and which I would like to refresh my memory.

THE COURT: What particular part is it that you want?

MR. STONE: I wanted Shapiro's statements and grand jury testimony.

THE COURT: Is there any reason you shouldn't let Mr. Stone have those over the weekend?

MR. STONE: I don't need them over the weekend, I need them an hour before I sum up or at the conclusion of the case.

THE COURT: I think we ought to do that, Mr. Buchwald.

MR. BUCHWALD: I would have it on the use, carrying 3500 material and referring to statements, if they are not in evidence --

THE COURT: We haven't gotten to that part.

MR. STONE: I have no intention of carrying a single

piece of paper before the jury. I want to sum up and prepare my summation.

THE COURT: Mr. Stone knows that wouldn't be permitted. He is a perfectly responsible lawyer and I think you ought to do that.

MR. BUCHWALD: The request, then, is for Mr. Shapiro's grand jury testimony?

MR. STONE: All the 3500 material concerning Mr. Shapiro. There was a statement, which we have here which is A for identification, which I intend to question Mr. Nesland on and hopefully get in evidence, that you gave back to me this morning. There are three other portions of Mr. Shapiro's 3500 material.

MR. WILLIS: May I join in that motion with my responsible colleague?

THE COURT: Yes. Probably the thing to do is to use it during the luncheon recess on Monday.

MR. STONE: That's right.

MR. BUCHWALD: While I would have no objection to making 3500 material available to Mr. Stone or Mr. Willis, even after the witness has left the stand for brief periods of time in the courtroom, we would object, when the witness is no longer on the stand, to releasing 3500 material, including grand jury testimony, having it taken outside of the courtroom.

I believe, under the statute.

THE COURT: That objection is overruled and I direct you to make it available to them.

And that you take it outside the courtroom. You gentlemen are directed not to make any copies of it and to return the 3500 material to the assistant United States Attorney.

These are responsible members of the bar and I can trust them. Sometimes it is inconvenient to look at it.

I don't know what our program on Monday will be but I am hoping that we can finish on Monday, despite the slow-down, assuming Miss Aguilar is in sufficient good health to be here. I am in a difficult position because following this trial I have a trial where two defendants are both in custody and I have to try that case. And I have an airplane which leaves for Vienna, and I am traveling with two other people, one of whom is my wife, and I simply can't postpone it. So that I am subjected to extraordinary pressures.

The reporter feels those pressures as much as I do, but we will have to do the best we can on Monday. You have to reckon on a possibility that we may sum up on Monday. We have to reckon on that possibility.

MR. STONE: Will you also charge late Monday evening?

THE COURT: I wouldn't normally. It would depend

is better.

MR. WILLIS: I hope it's not serious. I have been sitting next to her and conferring with her.

THE COURT: All right, 9:30 on Monday morning, then.

MR. BUCHWALD: Let the record reflect that I am returning the 3500 material which counsel gave to me last evening.

(Trial adjourned to Monday, December 10, 1973, at 9:30 a.m.)

UNITED STATES OF AMERICA

v. 73 CR. 702

CANDIDO MAYET and
MARIE AGUILAR a/k/a MARIA

Defendants

New York, N.Y.
December 10, 1973
9:30 a.m.

Trial resumed.

- - -

(In open court; jury not present.)

THE COURT: Mr. Stone, I am terribly disappointed that you were late this morning, and I am even more disappointed that Mr. Willis still isn't here.

MR. STONE: The train got stuck. It should have gotten here at 9:15. I got here three to five minutes late.

THE COURT: Is Mr. Roth in the witness room?

Suppose I bring the jury out, and suppose we go ahead with your cross-examination, Mr. Stone, and when you are finished, if Mr. Willis is here by that time, I will let him continue, if he wants to.

MR. STONE: It is agreeable with me, if Miss Aguilar has no objection, Your Honor.

THE COURT: All right. That is the way we will do it.

Mr. Clerk, get the jury.

Miss Aguilar, do you feel better?

MISS AGUILAR: A little better, sir.

THE COURT: I am sorry that you have been ill.

MISS AGUILAR: I have a note from the doctor, if it's necessary, your Honor.

THE COURT: We will go into that later.

(In open court; jury present.)

THE COURT: Good morning, members of the jury.

Members of the jury, I congratulate you on your punctuality this morning. I was here at 9:30 and I was told that all the jurors were here at 9:30. There are circumstances beyond our control that prevented us from getting started, but I would hope that the jurors will not be discouraged but will continue their good work.

Mr. Clerk, would you get the witness, and Mr. Stone can cross-examine.

MR. BUCHWALD: Might I approach the bench, your Honor?

THE COURT: You think it is essential?

MR. BUCHWALD: There is a matter I want to bring to your Honor's attention.

THE COURT: All right.

(At the side bar.)

MR. BUCHWALD: We would inquire at this time whether

there are any prospective defense witnesses in the courtroom.

THE COURT: I don't care whether there are or not. Let's go on.

Do you know of any?

MR. STONE: Yes, there may be.

THE COURT: Exclude them.

(In open court.)

B R U C E R O T H resumed the stand.

CROSS-EXAMINATION

BY MR. STONE:

Q Mr. Roth, have we ever met before?

A No.

Q When did you get arrested for your charge?

A I think it was around June 21, '72.

Q At the time of your arrest were you asked to cooperate by the Federal agents?

A Yes, I was.

Q Were you told what they meant by the term "cooperate"? Just yes or no.

A Yes.

Q Did they tell you that they wanted you to introduce them to someone for the purpose of purchasing narcotic drugs?

A At that time, no.

Q At any time between June '72 and June '73 did they

tell you that?

A Yes.

Q How many times?

A Once, twice.

Q At any time between June of '72 and June of '73 did you introduce them to anybody else outside of Harry Shapiro?

A Once.

Q Who was that?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Overruled.

A I don't even remember his name. I remember his name was Marty.

Q You personally made the introduction; is that correct?

A Yes.

Q Did they ask you, in the spirit of cooperation, to testify on any other cases concerning your narcotic activities?

A No.

MR. BUCHWALD: Objection.

THE COURT: Sustained. It is an improper question, on form. You can ask him what was said on the subject, but not to characterize it.

Q Was anything said concerning your testifying in any other cases, at the time of your arrest?

A I don't understand that question.

Q You were arrested?

A Yes.

Q You were asked to cooperate?

A Yes.

Q You told them you would cooperate?

A Yes.

Q At that time was there any discussion concerning your testifying in any cases against anybody?

A At that time that they told me to cooperate, no.

Q At any time between June '72 and June '73 did that conversation come up?

A No.

Q Did it come up at all?

A I don't think it came up until I was called back from Springfield.

Q When was that?

A November 10.

Q Of '73?

A Right.

Q Did you testify before the grand jury in this proceeding?

A Yes.

Q When was that?

A I don't remember the exact date.

Q Was it before November 10?

A Yes.

Q When you testified before the grand jury, was there any conversation concerning your cooperation at that time?

A When I testified in front of the grand jury, no.

Q None whatsoever?

A No.

Q Did you go to the grand jury pursuant to a subpoena or did you go to the grand jury on your own free will?

A My own free will.

Q Nobody asked you to come?

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

A I was asked to come.

Q By who?

A The U.S. attorney.

Q I see. At the time --

THE COURT: No comment on the answers. Just ask the questions, Mr. Stone.

Q At the time of your sentence before Judge Tenney, was there any mention that you would testify before the grand jury in this case?

A It was told to him that I cooperated.

Q Was that specifically mentioned to him, that you testified before the grand jury?

A I don't remember.

Q Before you were sentenced, did you have an interview with a probation officer?

A Yes.

Q In that interview, did you tell your probation officer that you testified in the grand jury?

A No, because I didn't testify when I had my interview.

Q When did you testify?

A I don't remember the exact date.

Q When did you have your interview?

A I had my interview right after sentencing.

Q When was sentencing?

A It wasn't after sentencing. After sentencing -- it was after I pled guilty.

Q When did you plead guilty?

A It must have been May.

Q When were you sentenced?

A August.

Q Between May and August of 1973, did you testify in the grand jury?

A Between May and August, yes.

Q Did you report that to your probation officer?

A No, I didn't.

Q The United States attorney, did he make any statement on your behalf at the time of your sentencing?

A He said that I cooperated with the Government, and that was about it.

Q Did he mention what case you had cooperated in?

A No.

Q He did not?

A No.

Q The only cases you cooperated in were in this case and the one by the name of Marty, whose last name you don't know; is that right?

A Right.

Q No other cases had you cooperated in?

A No.

Q Michael Lorber was your partner; is that correct?

A Yes.

Q Did there come a time when Michael Lorber showed you a sample of what he claimed was cocaine?

A He didn't show it to me.

Q Did he tell you about it?

A Yes.

Q Did you taste it?

A No.

Q Do you know what happened to that cocaine, of your own personal knowledge?

A He said that he spoke to --

Q What?

A Of my own personal knowledge, all I know is what he told me.

Q You didn't see him do anything with it?

A No.

Q Did you ever have a conversation with Harry Shapiro, after that sample was delivered to Michael Lorber, telling Harry Shapiro that you had tasted that sample?

A I don't think so.

Q Did you ever have any conversation with Harry Snapiro, after that sample was delivered, concerning that sample?

A No.

Q Did you ever have any conversation with Harry Shapiro before June 29 concerning the price of cocaine?

A No.

Q None whatsoever?

A None.

Q Did you ever have a conversation with Harry Shapiro at any time concerning the price ofcocaine?

A Just once on the telephone. He asked me if I knew

the price, and I said I did.

Q When was that telephone conversation?

A July 8 or July 9.

Q Was that the only conversation you had with him?

A As far as the price, yes.

Q You didn't mention the exact amounts of money on that conversation?

A No.

Q Who told you the sums of money?

A Michael Lorber.

Q At any time in your phone conversation with Harry Shapiro, did he tell you that Bobby Kelly was his partner?

A No.

Q Did he mention Bobby Kelly?

A Once.

Q When did you first meet Harry Shapiro?

A On July 9.

Q When you talked to him on the phone, you never met him; is that correct?

A No.

Q How long were you with him on July 9?

A About an hour and a half.

Q What time did they meet on July 9?

MR. BUCHWALD: Objection, your Honor.

THE COURT: What is the grounds of the objection?

MR. BUCHWALD: As to form.

THE COURT: All right.

What does "they" mean?

Q On July 9 Harry Shapiro came to Michael Lorber's showroom; is that correct?

A Yes.

Q What time was that?

A It must have been about 3, 3:30, in that area.

Q On July 8 you had a conversation with him setting up a time for that meeting; is that correct?

A Right.

Q What time was the meeting originally scheduled for?

A About 1:30.

Q When did you talk to Agent Korniloff to set up the meeting?

A About 11 o'clock.

Q That day?

A Yes.

Q What time did you tell Agent Korniloff to be present?

A One o'clock.

Q Was he there at one?

A Yes.

Q How long did he wait?

A I guess about until 2:30.

Q And they came about 3:30?

A Right.

Q Between 1:30 and 3:30 did you have any phone calls between you and Harry Shapiro?

A I think Michael Lorber had one.

Q What time was that?

A It must have been about 2, 2:30.

Q When that phone call came in, did you advise Agent Korniloff that they were on the way over?

A Michael did.

Q In your presence?

A He went downstairs.

Q You didn't hear him say that?

A I didn't hear him say what?

Q Anything to Agent Korniloff.

A No.

Q Prior to July 9, 1973, did you ever see Mr. Mayet?

A No.

Q After July 9, 1973, did you ever see Mr. Mayet?

A No.

Q Did you ever testify in any case against Harry Shapiro?

A No.

Q Did you ever testify in any case against Susan Marcus?

A No.

Q Did you ever testify in any case against Michael Lorber?

A No.

MR. STONE: No further questions.

THE COURT: Mr. Willis, do you have any questions?

MR. WILLIS: No.

THE COURT: Mr. Buchwald?

MR. BUCHWALD: One second, please.

No questions, your Honor.

THE COURT: Thank you, Mr. Roth, you may step down.

(Witness excused.)

MR. BUCHWALD: The Government calls Gregory Korniloff.

G R E G O R Y K O R N I L O F F , called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Korniloff, by whom are you employed?

A The Drug Enforcement Administration, United States Department of Justice.

Q In what capacity?

A Special Agent.

Q How long have you been so employed?

A Approximately two and a half years.

Q Were you so employed as an agent of the Drug Enforcement Administration on July 9, 1973?

A Yes, sir.

Q Directing your attention to that date, July 9, 1973, did you on that occasion speak with one Bruce Roth on the telephone?

A Yes, sir.

Q Do you recall what time of day that was?

A Yes, sir, approximately 3:45 p.m.

Q Who called who on that occasion?

A Mr. Roth called me, sir.

Q Where were you at that time?

A At the New York regional office.

Q Of the Drug Enforcement Administration?

A Yes, sir.

Q Would you state to the Court and jury what was said during that conversation, what you said and what Mr. Roth said?

A Yes, sir. Mr. Roth had called me and he explained that he was with Mr. Harry Shapiro, and that Mr. Shapiro had approximately three ounces of cocaine he had wanted to sell me. He asked me if I wanted to speak to Mr. Shapiro,

and I said yes. Mr. Shapiro got onto the phone and I asked Mr. Shapiro if he had the cocaine, and he said he did. He asked me if I had the money, and I said I did. He asked me to meet him later that day. I agreed and we arranged to meet at the Market Diner on Eleventh Avenue and 43rd Street at about 4 p.m. I terminated my conversation with Mr. Shapiro at that time and Mr. Roth got back on the phone. And I explained to Mr. Roth the arrangements I had made with Mr. Shapiro.

Q Did Mr. Roth refer to a Harry Shapiro?

A At that time, no, sir, just Harry.

Q How did this individual, Harry, address himself as, what name did he use? Did he use his full name?

A No, sir.

Q What, if anything, did you do at the conclusion of the telephone call.

A I quickly asked some of the agents in my group to come with me to the diner. I explained the situation, that we were going to meet Mr. Shapiro and Mr. Roth and that I needed surveillance agents to cover the meeting, with the possibility of a seizure involved.

Q Did you go to the Market Diner?

A Yes, sir.

Q When you arrived at the Market Diner, what happened?

A At that time I was driven to the area of the Market Diner in one of the surveillance cars. I exited the car on Eleventh Avenue, and that was near the diner, and I approached the diner and met with Mr. Roth and Mr. Shapiro outside the diner.

Q Had you met Bruce Roth before?

A Yes, sir.

Q And you spoke with him before?

A Yes, sir.

Q Did you see him down at the diner?

A Yes, sir.

Q Then what happened?

A Mr. Roth introduced me to Mr. Shapiro.

Q At that time did he use Mr. Shapiro's last name?

A No, he introduced me to Harry.

Q What happened?

A I greeted Harry, and Mr. Shapiro searched me. And I inquired as to the purpose of the search and he said he was looking for a gun. When he didn't find one, I suggested we go into the diner and discuss the transaction.

Q This occurred where, outside the diner?

A Yes, sir.

Q Where outside the diner?

A Outside the diner, between 43rd and 44th facing

Eleventh Avenue.

Q And the three of you went into the diner?

A Yes, sir.

Q What happened inside the diner?

A The three of us sat at the diner counter and ordered something to drink. I then discussed the transaction with Harry.

Q What did you say to him and what did he say to you?

A I asked Mr. Shapiro if he had the cocaine and he indicated that he did, in a brown plastic handbag he had been carrying under his arm. He asked me if I had the money and I said I did, at which time I took approximately $2100 of official advance funds out of my pocket and showed it to Mr. Shapiro.

Q You refer to official advance funds, what does that term mean?

A It is taxpayer's money which the Government uses to use as a flash roll to show possible defendants.

Q What do you mean by "flash roll"?

A It is money we do not spend on drugs, just to show a possible defendant that you do have money to purchase the drugs he is selling.

Q Then what happened?

THE COURT: Don't you sometimes spend it?

THE WITNESS: Yes, sir. Not in this instance, sir.

THE COURT: Not in this instance, but sometimes you do, don't you?

THE WITNESS: Yes, sir.

At that time I asked Mr. Shapiro if in the future if I purchased larger quantities of cocaine, would the price be reduced. And he said that it would. And I asked him how large of a quantity could I purchase in the future, and he informed me that he could handle as much as three kilos of cocaine. I also inquired about the quality of the cocaine, and he advised that the cocaine he was going to sell me could be cut approximately two times.

THE COURT: What is a kilogram in pounds?

THE WITNESS: 2.2 pounds.

THE COURT: Two and two-tenths pounds?

THE WITNESS: Yes, sir.

Q Then what happened?

A It was then agreed to complete the transaction in the diner's rest room, which is located underneath the diner. I then got up, removed my jacket and hung it on a hook, a clothing hook, while Mr. Shapiro advised Mr. Roth to remain at the counter while we went to the men's room. We then proceeded to the men's room.

Q You and Harry Shapiro?

A Yes, sir.

Q Then what happened?

A Upon entering the men's room, Mr. Shapiro asked me to enter one of the booths in the men's room. I hesitated and told him I didn't want to enter the booth. He inquired as to why I didn't want to enter, and at the same time opened the pocketbook, and I observed located in the pocketbook a package wrapped in aluminum foil and clear plastic. At that time I grabbed both the pocketbook and this package, and simultaneously two surveillance agents, an Agent Miele and an Agent Magnusson, entered the rest room. I identified myself, and they assisted me in arresting Mr. Shapiro.

Q Mr. Korniloff, I now show you what has previously been marked as Government Exhibit 3 for identification and I ask you if you recognize that item?

A Yes, sir.

Q How do you recognize it?

A I placed my initials and the date I took it away from Mr. Shapiro.

Q What is this item?

A This is the brown plastic pocketbook I seized the cocaine from and which was in the posession of Mr. Shapiro at that time.

Q At the time that you seized this pocketbook, was

anything in the pocketbook?

A Yes, sir.

Q What was that, if you recall?

A The cocaine was in it, a brown telephone book, some miscellaneous papers, I think two packs of cigarettes, a cigarette holder, a set of keys, a woman's nylon stocking. That is about all I can recall.

Q Would you look inside the pocketbook and tell me if, by looking inside, you are able to refresh your recollection with respect to the contents at the time you seized it?

A Yes, sir. There is also some --

Q Does it refresh your recollection?

A Yes, sir, it does.

Q Would you close the pocketbook?

A Yes, sir.

Q Were there other items, if any, in the pocketbook?

A There is some money in there, some brushes, two brushes.

Q How much money, do you know?

A No, I don't. I think it's a dollar and change.

Q What, if anything, did you do, Mr. Korniloff, with the aluminum foil package in a plastic bag that you seized?

A I maintained custody of both objects.

Q What, if anything, did you do with the aluminum

package afterward?

A I transported it back to our New York regional office and secured it in our overnight vault.

Q That was on the same day, July 9, 1973?

A Yes, sir.

Q Did you ever have occasion to see that package again?

A Yes, sir.

MR. STONE: We will stipulate to the chain of custody from the vault to the chemist, back here to court.

THE COURT: All right.

Mr. Willis, do you join in that?

MR. WILLIS: Yes, I join in the stipulation.

THE COURT: All right.

MR. BUCHWALD: At this time, your Honor, might we have one second?

THE COURT: All right.

MR. BUCHWALD: Might the record reflect at this time, your Honor, that I am holding what has previously been marked as Government Exhibits 1-A and 1-C for identification. These items are stapled together and I now unstaple them. Government Exhibit 1-A for identification is a lock-sealed envelope which has been opened and, as you can see, is empty.

Government Exhibit 1-C for identification is also

a lock-sealed envelope which is still in a locked condition. 414
Let the record reflect that I am now opening Government Exhibit 1-C for identification by cutting it with a pair of scissors.

MR. STONE: Our stipulation will include his offering this without the formal cutting.

THE COURT: All right.

MR. BUCHWALD: I have removed its contents, which I wish to have marked as Government Exhibit 1-B for identification.

(Government Exhibit 1-B marked for identification.)

Q Mr. Korniloff, I now show you what has previously been marked Government Exhibit 1-B for identification and ask you if you can identify that item?

A Yes, sir.

Q What is that item?

A It is the cocaine which I seized from Mr. Shapiro on the ninth of July.

Q How can you identify it?

A I placed my initials and the date I seized it on the package.

MR. BUCHWALD: At this time the Government offers Government Exhibit 1-B for identification into evidence as Government Exhibit 1-B

MR. WILLIS: No objection.

MR STONE: No objection.

(Government Exhibit 1-B received in evidence.)

Q Mr. Korniloff, after the events which you have described, did you ever have occasion to go to an apartment building at 615 Palisades Avenue, Cliffside, New Jersey?

A Yes, sir.

Q When was this, if you recall?

A I believe it was sometime after Mr. Shapiro's arrest. I can't remember the exact date, sir.

MR. STONE: May we have an instruction that this is only binding against the defendant it is offered against?

THE COURT: I am waiting to find out who is involved here.

Q Did you take with you, on that occasion, any of the items you found in the pocketbook, Government Exhibit 3 for identification?

A Yes, sir.

Q What item was that?

A A set of keys, sir.

Q Do you see that set of keys in the pocketbook?

THE COURT: Mr. Korniloff, you said you went to an address where?

THE WITNESS: 615 Palisades Avenue.

THE COURT: Did you see anybody at that address?

THE WITNESS: No, sir.

MR. BUCHWALD: May we have this marked?

(Government Exhibit 5 marked for identification.)

Q I now show you what has previously been marked as Government Exhibit 5 for identification and ask you if you can identify that item?

A Yes, sir.

Q What is that item?

A These are the set of keys I took out of the brown plastic handbag and took with me to 615 Palisades Avenue.

Q How do you know that these are the same set of keys which originally you found in the handbag?

A When I removed them from the handbag, I etched my initials and the date on each individual key ring medallion.

Q On that occasion when you went to 615 Palisades Avenue, did you speak with anyone in the building?

A Yes, sir.

Q Who was that?

A A Mr. Castillo, the superintendent of 615.

Q Is that Mr. Luis Angel Castillo?

A Yes, sir.

Q At anytime thereafter did you have occasion to use any of the keys in Government Exhibit 5 for identification?

A Yes, sir.

Q Where was this?

A It was at 615. We used a small brass key to open an apartment house mailbox.. It was Apartment 18..

Q Would you state to the Court and jury what exactly you did on that occasion with the keys.

A I placed the key in the lock, turned it and opened the mailbox door, and then closed it..

Q Did it work?

A Yes, sir.

Q You were able to open it?

A Yes, sir.

Q And able to close it?

THE COURT: What was the apartment to which the mailbox belonged?

THE WITNESS: Apartment 18, sir.

Q Did that mailbox have a name on it?

A Yes, sir.

Q What was the name?

A I believe it was Valenciana and Aguilar.

MR. BUCHWALD: At this time the Government offers Government Exhibit 3 for identification into evidence.

THE COURT: What is Exhibit 3?

MR. BUCHWALD: The pocketbook.

THE COURT: Any objections?

MR. WILLIS: No objections.

(Government Exhibit 3 received in evidence.)

MR. BUCHWALD: At this time the Government offers Government Exhibit 5 for identification in evidence as Government Exhibit 5.

THE COURT: Any objections?

MR. WILLIS: I object to the keys, your Honor. If they want to introduce one key, fine. All the other keys have nothing to do with this.

THE COURT: Are you offering the mailbox key?

MR. BUCHWALD: I am offering the set of keys.

THE COURT: I will let it be marked.

MR. STONE: Can that be marked only as to one defendant?

THE COURT: I think it is admissible as to both.

MR. STONE: The test occurred after the conspiracy ended as the use of the key as to one defendant.

THE COURT: I don't think that affects its admissibility. I think it's admissible against both.

Mark it.

(Government Exhibit 5 received in evidence.)

Q Mr. Korniloff, I draw your attention to the day following your arrest of Harry Shapiro, July 10, 1973, and ask

did you have occasion on that day to be in the vicinity of the Puma Shoe Store in New Jersey?

A Yes, sir.

Q What did you do on that occasion?

A Myself and three other agents initiated surveillance near the La Puma Shoe Store at approximately 5:45 that day.

Q Then what happened?

A At approximately 6:15 Mr. Mayet exited the shoe store and he was placed under arrest.

Q Had you ever seen Mr. Mayet before?

A No, sir.

Q Who were the agents that you were with, if you recall?

A Agent "all, Agents Magnusson and Cremin.

Q Who identified Mr. Mayet at that time?

A Agent Hall, sir.

Q Then Mr. Mayet was placed under arrest; is that correct?

A Yes, sir.

Q Did you advise him of his constitutional rights?

A Immediately after the arrest, he was advised of his rights by Agent Hall.

THE COURT: Let me stop long enough to tell the jury that this evidence from this point on, this testimony, may

only be considered as against Mr. Mayet, not as against Miss Aguilar. The principle is that where it is claimed that there is a conspiracy, that is an agreement or partnership, then acts and statements of one partner or one conspirator are admissible and may be considered as against all. But when an arrest has taken place, the conspiracy is at an end and acts and statements of individual partners, individual conspirators, are only to be considered as against that individual partner or conspirator. From this point on, at this point, this testimony is not to be considered against Miss Aguilar.

All right.

Q After Mr. Mayet was advised of his constitutional rights, did you or the other agents present have any discussion with Mr. Mayet?

A Yes, sir.

Q Did you ask him whether he had been in New York City on the preceding day?

A Yes, sir.

Q What did he say?

A Mr. Mayet explained that he was not in the city that day.

Q Did you have occasion at that time to drive past the Market Diner?

A Yes, sir.

Q Did Mr. Mayet say anything at that time?

A Yes, sir.

Q What was that?

A Mr. Mayet did not recognize the diner and said he was not there the previous day.

Q Mr. Korniloff, on the following day, July 11, 1973, did you have occasion to be present with Mr. Mayet in this courthouse?

A Yes, sir.

Q Where did you go with him at that time?

A We went to U.S. Attorney Phillips for a pre-arraignment interview.

Q At that time was Mr. Mayet again advised of his constitutional rights?

A Yes, sir.

Q Was he asked questions concerning his whereabouts on July 9?

A Yes, sir.

Q Was he asked questions concerning the last time he had seen Harry Shapiro?

A Yes, sir.

Q What did he say on that occasion?

A He said he had last seen Harry Shapiro on the

morning of the 9th at his shoe store, La Puma, in New Jersey; and that Mr. Shapiro had some business to take care of and he departed the shoe store --

Q Who departed?

A Mr. Shapiro departed the shoe store, and that Mr. Mayet later that day went to Brooklyn on some business.

MR. BUCHWALD: May I have just one moment, your Honor?

THE COURT: Certainly.

MR. BUCHWALD: No further questions, your Honor.

THE COURT: Mr. Willis?

CROSS-EXAMINATION

BY MR. WILLIS:

Q Agent Korniloff, is that the right pronunciation?

A Yes, sir.

Q When did you say you placed Mayet under arrest? What was the date?

A July 10 at approximately 6:15 p.m.

Q What was the date that your office, or you, issued an arrest warrant for one Maria Aguilar?

A I believe Miss Aguilar was indicted --

Q I didn't ask you the date of the indictment. I asked you the date of the arrest of Maria Aguilar.

A Miss Aguilar surrendered herself on August 6, 1973.

Q When was the date that you had an arrest warrant issued for her?

A An arrest warrant was issued here at the southern district on the 19th of July, I believe, sir.

Q Is it fair to say that that, of course, is ten days after the incident occurred; correct?

MR. BUCHWALD: Objection, your Honor.

THE COURT: I will permit it.

A Yes, sir.

Q And it is nine days after the arrest of Mayet; is that correct?

A Yes, sir.

Q When you arrested Mr. Shapiro on the 9th, did you speak to him?

A Yes, sir.

Q Did he cooperate with you?

A Yes, sir.

Q Did he give you information?

A Yes, sir.

Q Did that information include the name of Maria?

A Yes, sir.

Q What did Mr. Shapiro tell you concerning Maria?

A As far as her involvement in this?

Q That is right.

A He said that he had, on the day of his arrest, gone to New York with Maria and Candy Mayet. He believed that the cocaine seized was from Maria.

Q He believed the cocaine that was seized from him was Maria's?

A Yes, sir.

Q Was he sure?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q Did he have any facts or evidence to back up that belief that he expressed to you?

THE COURT: You mean, did he make any further statements, Mr. Korniloff?

Isn't that right? You are asking him, did he make any further statement of facts to him, the agent, and not any opinion?

MR. WILLIS: Did the agent make any further statement of facts to Mr. Shapiro?

THE COURT: Did Shapiro make any further statement of facts to back up his statement. I am trying to get at what you want, and you are entitled to that and I will let you have it.

Q Did Mr. Shapiro state any further facts concerning Miss Aguilar to back up his belief that the cocaine was hers?

A Yes, sir.

Q Tell me what they were.

A On the morning of the 9th, he had contacted Mr. Mayet to obtain the three ounces of cocaine which he intended to sell later that day. At that time Mr. Mayet did not have the cocaine, and Mr. Shapiro obtained the cocaine when, I believe, a call was placed to Maria. She arrived at the store and all three of them proceeded to New York City.

Q Did Harry Shapiro ever tell you that he ever saw cocaine on the person of Maria Aguilar, saw it?

A No, sir.

Q Did he tell you that when Maria Aguilar arrived in the shoe store, that he saw what he believed to be cocaine on her at that time?

A No, sir.

Q Would it be fair to say that what Mr. Shapiro related to you were, in your own words, his belief; right?

A Yes, sir.

MR. BUCHWALD: Objection.

THE COURT: I will permit that. I take it that Shapiro said he believed these things?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q When Shapiro gave you this information on Maria Aguilar

did he tell you that he knew her well?

A He had met her, sir.

Q Just met her?

A Yes, sir.

Q How many times had he met her previous to July 9?

MR. BUCHWALD: Objection as to the form of the question.

THE COURT: Yes, I assume he means how many times did Shapiro say that he had met Miss Aguilar.

A I can't recall any specific number. All I know was that he was familiar with her through his association with Mr. Mayet.

Q Did he tell you, Mr. Shapiro, that Maria Aguilar and Candy Mayet were boyfriend and girlfriend, did he make that statement to you?

A Yes, sir.

Q Did you take notes down on the basis of what Shapiro told you?

A Yes, sir.

Q Did you include in your notes that Mr. Mayet and Miss Aguilar were boyfriend and girlfriend?

A No, sir.

Q Would you tell me why you didn't include that in your notes?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q Is it possible, when you think back, Agent, that in fact Harry Shapiro never told you that? Or it would be in your notes if he told you?

MR. BUCHWALD: Objection.

THE COURT: Yes, the last makes it argumentative. I will permit the first part of it, certainly.

Q Is it possible, Agent, upon reflection now, that Mr. Shapiro in fact didn't tell you they were boyfriend and girlfriend?

A No, sir, he said they were girlfriend, boyfriend and business partners.

Q Business partners?

A Yes, sir.

Q He included that?

A Yes, sir.

Q Did you put that in your notes?

A No, sir.

Q Why not?

A At that time --

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Business partners in the shoe business?

A No, sir.

Q I assume they are business partners in the sale of cocaine?

A Yes, sir.

Q That is what Shapiro told you?

A Yes, sir.

Q Did he tell you how long they had been partners?

A I don't recall the exact time, but Mr. Shapiro became familiar with their operation when he first was employed by Mr. Mayet.

Q Mr. Shapiro, did he tell you he ever received cocaine before July 9 from Maria Aguilar?

A No, sir.

Q Did Mr. Shapiro ever tell you that he ever had any conversations with Maria Aguilar involving cocaine?

A No, sir.

Q Did Mr. Shapiro tell you he received any money for the sale of cocaine from Maria Aguilar?

A No, sir.

Q Did Mr. Shapiro ever tell you that, in the presence of Candy Mayet, in his presence, that Shapiro, Mayet and Aguilar ever discussed cocaine?

A I don't understand the question.

Q Did Mr. Shapiro ever tell you that he was privy to

a conversation or a meeting between Mayet and Aguilar where the discussion was the sale of cocaine?

A No, sir.

Q Did you inquire from Mr. Harry Shapiro, on the basis of all questions I have just asked you, how he established to you that there was a partnership existing in the sale of cocaine between Aguilar and Mayet?

A From discussions with Mr. Mayet.

Q You mean Shapiro told you he had discussions with Mayet and Mayet said that Maria is my partner?

A Yes, sir.

Q Is that in your report?

A No, sir.

Q When did he have the discussion with Mayet?

A During the period of his employment at Mr. Mayet's shoe store.

Q Any specific dates?

A No, sir, I can't recall.

Q Did you want to know?

A Yes, sir.

Q Could he give you dates?

MR. BUCHWALD: Objection, your Honor.

THE COURT: I will sustain the objection.

You can ask him, did he give him dates, was he asked.

Q Did you ask Shapiro for dates?

A Yes, sir.

Q Was Shapiro able to give you times and dates when this occurred?

A No, sir.

Q Any dates and any times?

A No specific dates.

Q You are testifying now from your memory of your conversation with Shapiro; correct?

A Yes, sir.

Q Because this particular information does not exist in your written report; is that accurate?

A Yes, sir.

Q On the basis of what Harry Shapiro told you, an arrest was made of Candy Mayet; is that right?

A No, sir.

Q Correct me; why is it not correct?

A Mr. Mayet's arrest was based on --

MR. STONE: Objection, your Honor.

THE COURT: Yes, I will sustain the objection.

Q On the basis of the information given to you from one Harry Shapiro, was Miss Aguilar placed under arrest?

A Yes, sir.

Q Will you tell this jury why ten days after

Harry Shapiro's arrest an arrest warrant is issued, ten days after, for Maria Aguilar?

A We did not know Miss Aguilar's last name at the time.

Q It took you, Officer, or Agent, ten days, the United States Government, to determine the last name of Maria?

A It took ten days for Miss Aguilar to be indicted.

Q That was not the question that I asked you.

MR. BUCHWALD: I object to the comments of counsel.

THE COURT: Just ask another question.

Q The question asked was, how many days did it take the United States Government to find out this girl's last name?

MR. BUCHWALD: Objection as to form.

THE COURT: Overruled.

A Approximately two days sir.

Q So it wasn't because you couldn't find her last name that you waited ten days, was it?

A That was part of it, sir.

Q What was the other part?

A It took time for proceedings, legal proceedings, grand jury hearings, rounding up witnesses.

Q I am asking you now, everything that took place prior to the said indictment of Maria Aguilar, why did you

have eight days left before an arrest warrant was issued for Miss Aguilar when you had her name?

THE COURT: He already answered that question. This is repetitious, let's go on.

Q You questioned Shapiro?

A Yes, sir.

Q You said he was cooperative?

A Yes, sir.

Q Describe to the jury the condition that you were able to observe Mr. Shapiro in when you questioned him. What did he look like, his physical condition?

THE COURT: You mean whether he was sick or well or drunk or sober?

MR. WILLIS: Right.

THE COURT: All right.

MR. WILLIS: Or scared.

A He looked well.

Q Did anyone in your presence ask him if he felt well?

A At what time, sir?

Q When he is giving you the information concerning Maria Aguilar.

A I don't recall, sir.

Q Is it not a fact that the only one in this entire investigation that you conducted, prior to the indictment of

Maria Aguilar, who could give you any information concerning her involvement in this case was Harry Shapiro?

A No, sir.

Q Who else?

A Mr. Roth.

Q Mr. Roth?

A Yes.

Q That is Mr. Roth who has testified in this case?

A Yes, sir.

Q You spoke to Mr. Roth, haven't you?

A Yes, sir.

Q You spoke to him about this case, have you not?

A Yes, sir.

Q You have spoken to him about what he is going to say or what his testimony might be in this case; is that correct?

A Yes, sir.

Q Did you tell Mr. Roth that it was important that he connect this girl to this case? Did you tell him that?

A No, sir.

Q Did you talk to Mr. Roth in the presence of any United States attorneys?

A Yes, sir.

Q Who were the attorneys?

A Mr. Nesland, Mr. Wall and Mr. Buchwald.

Q Nesland?

A Yes, sir, Jim Nesland.

Q When you spoke to Roth, was Shapiro around?

A In the same room, sir.

Q Was he in the same area?

MR. BUCHWALD: Objection, your Honor.

THE COURT: You mean, was he in the same building?

Q Was Shapiro in the same building?

A Yes, sir.

Q Was he on the same floor?

MR. BUCHWALD: Could we have a time frame on the question?

THE COURT: I take it it is while Mr. Nesland and the others were questioning Shapiro, is that it?

MR. WILLIS: That is right, Judge.

A There are a few times Mr. Nesland spoke to both Mr. Shapiro and Mr. Roth.

Q Mr. Nesland spoke to both of them. In fact, in your presence Mr. Nesland was trying to coordinate; would that be fair? Coordinate his witnesses; is that fair. Set the case up to go to trial; is that right?

THE COURT: I can't permit that. That is all full of argument and conclusions. You can ask what happened.

Q Isn't it a fact that Maria Aguilar wasn't arrested, She turned herself in voluntarily?

A Yes, sir.

MR. WILLIS: No further questions, your Honor.

THE COURT: I guess when she turned herself in she was placed under arrest?

THE WITNESS: Yes, sir.

THE COURT: All right, Mr. Stone.

CROSS-EXAMINATION

BY MR. STONE:

Q Mr. Korniloff, did you have any occasion to telephone Susan Marcus or talk to her over the telephone prior to this case?

A Yes, sir.

Q When was that?

A Approximately three weeks ago.

Q Were you the gentleman that advised her to obtain an attorney?

A I stated that she could bring an attorney, if she so desired.

Q Did she eventually come to the courthouse with an attorney?

A No, sir.

Q Did you ever see her come to the courthouse?

A No, sir. The first time I saw Miss Marcus was at our New York regional office with her attorney.

Q Do you know the name of that attorney?

A I believe it was a Mr. Baer.

Q Would you know Mr. Baer before he came to your office?

A I'm sorry, sir, it wasn't Mr. Baer. It was Mr. Finestein -- Mr. Schimlit.

Q Did you ever see her with a Mr. Baer?

A No, sir.

Q How many times did you see Susan Marcus?

A Twice.

Q Where was the first time?

A New York regional office.

Q And the second time?

A Southern district.

Q At that time was she with an attorney?

A Yes, sir.

Q Who was that attorney?

A I don't recall the name.

Q Was it the same attorney who appeared before?

A No, sir.

Q Do you know Mr. Harold Baer?

A No, sir.

Q Mr. Korniloff, are you the gentleman that first

arrested Mr. Lorber and Mr. Roth in June of '72?

A I was one of the surveillance agents, sir.

Q Were you one of the agents that had asked both of those gentlemen to cooperate after their arrest?

A No, sir.

Q Were you present when any other agent asked them to cooperate at that time?

A Yes, sir.

Q Who was that agent?

A Agent Lightcap.

Q From June of '72 until July of '73, had either Mr. Roth or Mr. Lorber cooperated with the Federal authorities?

MR. BUCHWALD: Objection, your Honor.

THE COURT: What is the grounds of the objection?

MR. BUCHWALD: It calls for a conclusion.

THE COURT: You mean the use of the word "cooperate"?

MR. BUCHWALD: Right.

THE COURT: I think I will permit it. Overruled.

A At the time, Agent Lightcap was maintaining contact with Mr. Lober and Mr. Roth. I don't know what other information they have given to Mr. Lightcap.

Q Did they ever introduce you to any person for the purpose of purchasing narcotics?

A No, sir.

Q The first time you had any dealings with either Mr. Roth or Mr. Lorber concerning the purchase of narcotics was in July of 1973; is that correct?

A Yes, sir.

Q Before that, did you discuss this potential purchase with Mr. Lorber?

A No, sir.

Q Did you discuss it with Mr. Roth?

A No, sir.

Q When, for the first time, were you advised that a purchase of narcotics was about to take place?

A It was the morning of July 9, sir.

Q What time was that?

A Approximately 10:30, 11 a.m.

Q Between July 5 and July 9 of 1973 had any agent told you that Michael Roth was trying to establish a buy of narcotics?

A I believe there were a few attempts, sir.

Q Did you have any discussion concerning that?

THE COURT: Michael is Lorber, isn't it?

MR. STONE: Yes.

THE COURT: And it is Bruce Roth?

MR. STONE: I will use the last names.

Q Did any agent tell you that Roth or Lorber were trying to set up a buy of narcotics?

A I can't recall, sir.

Q Do you give any of the informers any specific instructions before you go along with them in attempting to buy narcotics?

A Yes, sir.

Q Before you go as an undercover agent, don't you make an attempt to find out as much as you can about the suspect?

A Depending how much time we have, sir.

Q And you certainly make an attempt to find out what type of narcotics you are buying? Is that correct?

A Do you mean --

Q You want to know what you are buying, whether it's cocaine or heroin or marijuana?

A Right.

Q And of course you want to know the price; is that correct?

A Yes, sir.

Q And you want to know -- well, you were familiar, were you not, on July 9, the going price of cocaine in the New York area?

A Yes, sir.

Q That is part of your job to know that, isn't it?

A Yes, sir.

Q Did you ever discuss that with Mr. Roth or Mr. Lorber before July 9, 1973?

A No, sir.

Q Did you ever discuss it with them between 11 a.m. and 4:30 p.m. on July 9?

A I determined the price of three ounces that we are going to seize.

Q When did you determine that?

A Between 10:30 and 11 a.m.

Q That was from a phone call from whom?

A It was at the initial interview when Mr. Roth and Mr. Lorber came to the New York regional office.

Q What time did they come?

A Between 10:30 and 11 a.m.

Q Did they tell you there was a meeting that day to buy the narcotics?

A Yes, sir.

Q What time was the meeting supposed to be?

A 2 p.m., sir.

Q Did they tell you who the person was that was going to sell the narcotics?

A The first name, sir.

Q Did they describe him to you?

A As I recall --

Q Just yes or no.

A Yes, sir.

Q Did you ask them if they knew anything about this person?

A Yes, sir.

Q Did they?

A Yes, sir.

Q Did they tell you how many times they had personally seen him?

A Yes, sir.

Q How many times did Lorber personally see Shapiro before that day?

A I believe once or twice.

Q Before that?

A Yes, sir.

Q How many times had Roth seen him before that day?

A I don't recall, sir.

Q But he had seen him?

A I believe so.

Q Did either of them tell you that Shapiro had ever given them narcotics before?

A No, sir.

Q Did Shapiro ever tell you he received a sample from anybody of narcotic?

A Did who?

Q Did Lorber ever tell you he ever received a sample of narcotics from anyone?

A No, sir.

Q When a person works as an informer, do they have your permission to handle narcotics without you being present?

A They have our permission to handle narcotics when they are working on an investigation.

Q Of course, you wouldn't want to know about it beforehand; is that correct?

A Yes, sir.

Q To safeguard the situation you would search the informer before and after, would you not?

A Yes, sir.

Q That is part of the Federal regulations; is it not?

A Yes, sir.

Q Did you search Mr. Lorber that day?

A When, sir?

Q Before 4 o'clock on July 9, 1973.

A No, sir.

Q Did you search Mr. Roth?

A Yes, sir.

Q When?

A Approximately 1:45 p.m.

Q Where was that?

A In the area of Jerry's Diner at 40th Street and Seventh Avenue.

Q Who was present?

A Myself and, I believe, Agent Magnusson.

Q Did you ever have a conversation with Roth as to Shapiro's source of supply?

A Yes, sir.

Q What did he say?

A I believe Mr. Roth believed that Harry was obtaining his cocaine from a Cuban connection in New Jersey.

Q Did he describe him for you?

A No, sir.

Q All you knew was that it was a Cuban person; is that correct?

A Yes, sir.

Q You didn't know his name?

A No, sir.

Q In your undercover capacity -- you work undercover quite often, do you not?

A Yes, sir.

Q When you meet a suspect, do you try to establish a

rapport with that suspect?

A Yes, sir.

Q You try to find out how easy it is for him to get cocaine?

A Yes, sir.

Q And where he gets it from?

A Yes, sir.

Q How much he pays for it?

A If time permits, sir.

Q How many times he can get it for you?

A If time permits.

Q You even try to, if time permits, to find out where he keeps his cocaine; is that correct?

A Yes, sir.

Q If time permits, you will try and get a warrant and raid that person's place; is that correct?

A I think it depends on the specific instance.

Q In an undercover capacity, if you were discussing cocaine with a suspect, you were buying two or three ounces and he told you he had two or three kilos, would you be interested?

A Yes, sir.

Q Wouldn't you try to find out where he stored the two or three kilos?

A Yes.

Q And you would try, eventually, as part of your duties, to seize the two or three kilos, wouldn't you?

A Yes, sir.

Q You wouldn't terminate a case if you thought this person had two or three kilos, would you?

A Yes, sir.

Q You wouldn't terminate it?

A No, sir.

Q You would try to go further?

A Right.

Q In fact, you are even authorized to spend some of the money you draw out so that you can go further; is that right?

A Yes, sir.

Q You eventually try to get to the source of the person who has the cocaine; is that it?

A That is right.

Q That is really your job, isn't it?

A Yes, sir.

Q When you talked to Mr. Shapiro in your undercover capacity, did you ask him any questions about the cocaine?

A Yes, sir.

Q And you wrote that down in your report, did you not?

A Yes, sir.

Q And you asked him how easy it was to get cocaine; is that correct?

A Yes, sir.

Q Did you ask him where he could get it?

A No, sir.

Q You did not?

A No, sir.

Q Did you ask him who his connection was?

A No, sir.

Q Yet, that was one of your prime functions; is that correct?

THE COURT: I won't permit that question. That is just an argument.

Q During your conversation with Shapiro while you were working in an undercover capacity and before you identified yourself as an agent, had he mentioned Candy Mayet?

A No, sir.

Q Had he mentioned a Cuban connection?

A No, sir.

Q How long after the arrest of Shapiro did he decide to cooperate?

A I wasn't at the initial debriefing. I was in another surveillance car. I don't know what determination

was made at that meeting.

Q Were you present when Mr. Shapiro was arraigned by the United States Attorney?

A Yes, sir.

Q When was that?

A It was July 10.

Q And you had arrested him on the 9th; is that correct?

A Yes, sir.

Q About 4:30, 5 o'clock?

A Right, sir.

Q On the 10th, when you went to the office of the United States Attorney, were you aware at that time that Mr. Shapiro was already willing to cooperate?

A Yes, sir.

Q At that time you got a warrant for Mr. Mayet; is that correct?

A On the same day, yes, sir.

Q On the 10th?

A Yes, sir.

Q Were there any questions of Mr. Shapiro by the United States Attorney concerning Mr. Shapiro's addiction?

A Yes, sir.

Q And you remember his answers?

A I can't recall, sir.

Q Was there any question by the United States Attorney to Mr. Shapiro at the time of his arraignment concerning Mr. Shapiro's excess use of alcohol?

A No, sir.

Q You are positive?

A I can't recall.

Q Were you present when Mr. Nesland wrote down certain statements?

A At the interview, sir?

Q Yes, of Shapiro.

A Yes, sir.

Q Did you ever see Mr. Nesland's report?

A No, sir.

Q What time was the interview at the United States Attorney's office?

A I can't recall, sir.

Q Was it in the morning or afternoon?

A I would have to guess, sir. I can't answer you.

Q What is the best of your recollection?

A The morning.

Q How long did it last?

A I can't recall, sir.

Q After that interview, it was already agreed that

Mr. Shapiro would be placed on a certain type of bail; is that correct?

A Bail was suggested.

Q By the United States Attorney?

A Yes, sir.

Q Was Shapiro to stay in contact with you?

A Yes, sir.

Q And he gives you his phone number; is that correct?

A Yes, sir.

Q And you give him your phone number?

A Yes, sir.

Q And do your remember what time that was?

A The phone number exchange?

Q Yes.

A No, sir.

Q Were you ever present between the time of Shapiro's arrest and his arraignment when he made a telephone call to Mr. Mayet?

A Yes, sir.

Q When was that?

A I would have to approximate 6:30 p.m. on the 9th.

Q At that time had Mr. Shapiro already agreed to cooperate?

A Yes, sir.

Q No question about it, is there?

A About what?

Q Before the phone call he agreed to cooperate?

A Yes, sir.

Q In fact, you suggested the phone call?

A Yes, sir.

Q Do you remember what he said over the telephone?

A He made, I believe, three calls, sir.

Q Did you hear all those calls?

A The phone calls were recorded, sir. I heard him ask questions on the phone when he made the three phone calls.

Q You don't know who he talked to, do you?

A No, sir.

Q When was the first call, the approximate time?

A About 6:30 p.m.

Q And the second call?

A I don't know if there was a second call.

Q You said there were three.

A I believe there were three. I couldn't guess a time.

Q Between the first and the third, how much time had elapsed?

A Thirty minutes, sir.

Q So they all occurred on the evening of the 9th; is

that your best recollection?

A Yes, sir.

Q At the time all the calls were made, there is no doubt in your mind that Shapiro had already agreed to cooperate?

A Yes, sir.

Q Did he sign any statements?

A No, sir.

Q But he gave you a statement; is that correct?

A Oral, sir, yes.

Q When a person gives you an oral statement, do you include that in your report?

A No, sir.

Q You never do?

A No, sir.

Q It is something you would remember; is that right?

A Yes, sir.

Q If a person did not give you an oral statement, would you put that in your report?

A Yes, sir.

Q When, for the first time, did Shapiro mention Susan Marcus?

A The first time I heard Miss Marcus' name mentioned was from Mr. Lorber.

Q When was that?

A I can't recall, sir. It was after Mayet's arrest.

Q It was after the case went to the grand jury?

A I believe so.

Q Did you question Mr. Lober about it or did he volunteer the information?

A He volunteered the information, sir.

Q Up until that time had Lorber ever cooperated with you in any narcotics investigation?

A No, sir.

Q And you were aware, were you not, that Lorber and Roth were scheduled for sentencing very shortly?

A Yes, sir.

Q Did you make any statement to the United States Attorney, to the probation officer or to the sentencing judge concerning Lorber and Roth's cooperation?

A Myself, sir?

Q Yes.

A No, sir.

Q Did any fellow agents make that statement?

A I don't know.

Q Did you report to the United States Attorney concerning the extent of Lorber and Roth's cooperation?

A I myself, no, sir.

Q Any of your fellow agents?

A I don't know, sir.

Q When you went to arrest Mr. Mayet, did you search him after his arrest?

A Yes, sir.

Q Did you find any money on him?

A Yes, sir.

Q How much?

A I can't recall, sir.

Q Less than $50?

A Yes, sir.

Q Did you find any narcotics on him?

A No, sir.

Q Was he going to a car?

A Yes, sir.

Q Had he already entered the car?

A Yes, sir.

Q What kind of car was it?

A I believe it was a station wagon, sir.

Q How old was it?

A '69, '70.

Q Did you ask him whose car it was?

A No, sir.

Q Did you ask him for the registration of the car?

A No, sir.

Q In your capacity as a Federal narcotics agent, when a car is used to facilitate a crime, do you have instructions to seize that car?

A Yes, sir.

Q If a person were using a car to transport narcotics, that would be the facilitation of a crime; is that correct?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q Did Shapiro tell you on July 9, 1973, that he drove from New Jersey to New York in Mayet's station wagon?

A I can't recall what vehicle was mentioned, sir.

Q Did you ask him?

A Yes, sir.

Q Did he give you an answer?

A Yes, sir.

Q And did you include that in your report?

A No, sir.

Q Did Roth discuss any car with you that he had seen?

A No, sir.

Q You testified that after Mayet's arrest you questioned him and took him to the Market Diner; is that correct?

A No, sir.

Q You took him by the Market Diner?

A Yes, sir.

Q And you asked him certain questions?

A Yes, sir.

Q And he gave you certain statements?

A Yes, sir.

Q And this was after he was advised of his constitutional rights; is that correct?

A Yes, sir.

Q When you questioned him concerning Shapiro at the time of his arrest, he also gave you certain statements?

A Yes, sir.

Q And those, according to what you believed, were false statements; is that correct?

A Yes, sir.

Q And you put that in your report; is that correct?

A No, sir.

Q But you are positive, are you not, that Mr. Mayet made certain statements to you?

A Oral statements, right.

Q Oral statements?

A Right.

MR. STONE: Can we mark this for identification, please.

(Defendant Mayet Exhibit B marked for identification.)

(Defendant Mayet Exhibit C marked for identification.)

Q And you testified that the next day, July 11, you were present when he was interviewed by Mr. Phillips; is that correct?

A Yes, sir.

Q And he is a United States attorney?

A Yes, sir.

Q What time was that interview?

A I can't recall, sir.

Q Morning or afternoon?

A Probably the morning.

Q Did you have occasion to review Mr. Phillips' notes concerning that interview before you testified?

A No, sir.

Q And it is your testimony that Mr. Mayet said he hadn't seen Shapiro since Monday morning; is that correct?

A What was the date of Monday morning, sir?

Q What?

A What date was Monday morning?

Q The 9th.

A I don't know if the question was asked whether he saw him after the 9th or not.

Q Do you remember him being asked whether he saw him on the 9th?

A Yes, sir.

Q Did you ask him what time he had seen him?

A Yes, sir.

Q Didn't you testify on direct examination that Mr. Mayet replied that he hadn't seen him after Monday morning?

A I believe I said that he saw him on Monday morning, Mr. Mayet saw Mr. Shapiro on Monday morning.

Q It was your testimony that Mr. Mayet said he didn't see him after that day; is that correct?

A Mr. Mayet didn't give any statements as to whether he saw him that day. I don't think the question was asked.

Q Did you ask Mr. Mayet whether he saw him that afternoon?

A I don't see the question was asked, sir.

Q I show you Defendant's Exhibit B for identification and I ask you whether that is your report?

A This is a copy of my report.

Q Can you tell whether your signature is on that report?

A Yes, sir.

Q And you read your report before you testified?

A Yes, sir.

Q And, of course, you're instructed to write truthful reports to the best of your ability; is that correct?

A Yes, sir.

Q How long have you been an agent?

A Two and a half years, sir.

Q And you go to school and you are aware of what the important things are in investigation, are you not?

A Yes, sir.

Q I ask you if Paragraph 4 refers to any statement that you took from Mr. Mayet at the time of his arrest?

A Yes, sir.

Q What does it say?

A The defendant --

MR. BUCHWALD: Objection.

THE COURT: I will permit it. Overruled.

A The defendant declined to make a statement and was lodged at the Federal Detention Center at West Street, New York.

Q You testified today about the statements Mayet made; is that correct.

THE COURT: No question of that kind will I permit. You can make that argument to the jury.

MR. STONE: I offer it in evidence, your Honor.

THE COURT: The whole thing?

MR. STONE: Yes.

THE COURT: Any objection?

MR. WILLIS: I think the Court ought to look at this. If there is any statement by Mayet, we may have a Bruton problem and I want it stricken from the report.

MR. BUCHWALD: The Government has no objection.

THE COURT: Have you seen this, Mr. Willis?

MR. WILLIS: That is the report by the officer?

THE COURT: Yes. I am going to exclude the last four words of Paragraph 1. The rest of it will be received.

MR. WILLIS: I can't seem to find it here. May I approach the bench?

MR. BUCHWALD: I believe this is Item 3507-E.

MR. WILLIS: Just so I know what you are referring to.

THE COURT: The end of Paragraph 1, those words are excluded, and if it becomes appropriate, we can have another copy and blank those out.

I take it you don't care, Mr. Stone?

MR. STONE: It makes no difference, your Honor.

THE COURT: Mark it, Mr. Clerk. The record will show that the last four words of Paragraph 1 are not received.

(Defendant Mayet Exhibit B received in evidence.)

MR. STONE: May I read Paragraph 4 in evidence?

THE COURT: You may.

MR. STONE: "Special Agent Hall advised Mayet of his constitutional rights and he was then transported to the New York Regional office for processing. The defendant declined to make a statement and was lodged at the Federal Detention Center, West Street, New York. On July 11, 1973, Mayet was arraigned by U.S. Magistrate Sol Slyper, S.D.N.Y.. The defendant's bail was set at 25,000 P.R.B, Personal Recognizance Bond secured by the deed of his parents' house and co-signed by his parents."

That is your report, is it not?

THE WITNESS: Yes, sir.

Q So you are testifying as to Mayet's statements as to what you remember?

A His oral statements.

Q And the oral statements that he made before Mr. Phillips?

A Yes, sir.

Q And yet in your report --

THE COURT: No, that I won't permit.

Q How many times have you discussed this case with Mr. Shapiro between July 9 and today?

A I can't recall, sir.

Q More than five?

A I was charged to make sure Mr. Shapiro kept his

appointments with Mr. Buchwald and the other U.S. attorneys who had the case. The question was always, what for? And it was for the case.

Q On July 9 of 1973, did you ever use the name Greg over the telephone to Mr. Shapiro?

A Excuse me?

Q Your first name is Gregory?

A Yes, sir.

Q You were introduced by Mr. Shapiro as Greg; is that right?

A Yes, sir.

Q "Harry, this is Greg. Greg, this is Harry"?

A Yes, sir.

Q When is the first time that you remember that the name Greg was used by you over the telephone?

A Speaking to who?

Q Mr. Shapiro.

A The first time I spoke with Mr. Shapiro.

Q That was over the phone?

A Yes.

Q And he called you Greg and you called him Harry?

A I remember calling him Harry. I don't know if he called me Greg.

Q Did Roth introduce you over the phone?

A Yes, sir.

Q Do your remember what time the phone call was?

A We are referring to the initial call on the 9th, July 9?

Q That is correct.

A The call was made about 3:45.

Q After Shapiro's arrest, did Shapiro ever tell you he actually saw cocaine in Mr. Mayet's posession?

A He stated that he had seen the package I seized out of the handbag in Mr. Mayet's pocket.

Q When did he tell you that?

A In subsequent meetings with the U.S. attorney.

Q But it was not at the first meeting?

A At the initial debriefing in the parking lot?

Q Yes.

A Sir, I wasn't at that debriefing. I don't know what was discussed.

Q But you were there a few minutes later for the phone call.

A I don't know what you are referring to, sir.

Q But you came back to the office when Shapiro made the call to, supposedly, Mayet; is that right?

A Yes, sir.

Q Other than this case, did Harry Shapiro do anything

else to further the prosecution of any narcotic defendant?

A No, sir.

MR. STONE: No further questions.

THE COURT: Anything else, Mr. Buchwald?

MR. BUCHWALD: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Korniloff, on the day of Mr. Shapiro's arrest, did he tell you at any time that before entering the Market Diner he had seen the cocaine in that pocketbook, Government Exhibit 3?

A I can't recall, sir. Do you mean the package of cocaine or the cocaine --

Q The package of cocaine.

A Yes, sir.

Q Did he tell you who had the pocketbook earlier that day?

A Yes, sir.

Q Who did he say had the pocketbook?

A Miss Aguilar.

Q Did he use her last name?

A No.

Q What did he call her?

A Maria.

Q You testified, did you not, that Michael Lorber and Bruce Roth had not spoken with you before July 9 about the prospective purchase of cocaine; is that correct?

A Yes, sir.

Q Do you know whether they spoke with any other agents of the Federal Enforcement Administration?

A Yes, sir.

Q Do you know that they did or they didn't?

A They did, sir.

Q Were you present during interviews by Assistant United States Attorney Nesland of Harry Shapiro?

A Yes, sir.

Q Were you present during interviews by Assistant United States Attorney Nesland of Bruce Roth?

A Yes, sir.

Q Were you present during interviews by Assistant United States Attorney Nesland of Michael Lorber?

A Yes, sir.

Q Did Mr. Nesland ever have two or three of those people in the room at the same time as he asked them questions and got their answers?

A No, sir.

Q He kept them separated?

A Yes, sir.

Q You testified, have you not, as to certain discussions which you had with Mr. Shapiro on July 9, after his arrest?

A Yes, sir.

Q Do you know whether Mr. Shapiro also spoke with other agents on July 9, after his arrest?

A Yes, sir.

Q Do you know whether or not Mr. Roth spoke with other agents on July 9, after Mr. Shapiro's arrest?

A Yes, sir.

Q You have testified, have you not, as to certain statements made by Mr. Mayet after his arrest on July 10; is that correct?

A Yes, sir.

Q Did you ask him if he would give you a written statement?

A Yes, sir.

Q What was his response?

A He declined, sir.

Q You have testified, have you not, that Mr. Shapiro was arrested at the Market Diner?

A Yes, sir.

Q And at some point on July 9, he was taken back to the New York regional office; is that correct?

A Yes, sir.

Q Before his having been brought to the New York regional office, are you aware of his having been brought any place else?

A Yes, sir.

Q Where is that?

A From the Market Diner parking lot to the area of Jerry's Restaurant.

Q Did you go there with him?

A Yes, sir.

Q You arrived there when he was there?

A Yes, sir.

MR. BUCHWALD: Might I have just one moment, your Honor?

THE COURT: All right. We are taking an awful lot of time here.

MR. BUCHWALD: No further questions.

THE COURT: Mr. Willis?

MR. WILLIS: No questions, your Honor.

THE COURT: Mr. Stone?

MR. STONE: No further questions.

THE COURT: Thank you. You may step down.

(Witness excused.)

THE COURT: Madam Foreman and ladies and gentlemen

of the jury, let's take our morning recess.

(The jury left the courtroom.)

THE COURT: All right. Let's take a few minutes.

(Recess.)

(In open court; jury not present.)

THE COURT: Mr. Willis, would it be prudent to put something on the record about Miss Aguilar and her health over the weekend?

MR. WILLIS: I also have the certificate, Judge.

THE COURT: You remember, I never expressed the slightest doubt that Miss Aguilar was sick. As a matter of principle, I think I have to have some record of some verification of the fact, so that I tried to do it uniformly. It doesn't imply any suspicion that the young lady is malingering. Do you want to put that in the record?

MR. WILLIS: Yes, Judge. I am only smiling because I have been examined when I was ill during a trial.

May I have this just marked for identification and made part of the record? This is a note from a Dr. Orlando DeValle, M.D., Union City, New Jersey, who, on the 7th of this month, examined the lady. It says, "Tonsillectomy attack, fever," and as with most doctors, I can't read the rest of his writing.

THE COURT: Let's make it part of the record.

MR. WILLIS: Fine.

THE COURT: Make it a Court exhibit.

MR. WILLIS: Miss Aguilar is here today but she is still sick. She still has a slight temperature. I spoke to her yesterday and she is feeling a little better, and I think we can proceed.

THE COURT: I think we found, the other day, that the nurse wasn't here.

MR. WILLIS: On Wednesday the nurse isn't here.

THE COURT: Maybe the nurse is here today. She certainly is available to help Miss Aguilar. I am terribly sorry about it. The Government did the best it could, but it couldn't produce a doctor who would go to her apartment and see her.

I guess that is all we need on that.

(Court Exhibit 1 marked.)

THE COURT: Bring in the jury.

(In open court; jury present.)

THE COURT: Next witness.

MR. BUCHWALD: The Government calls Mr. Jeffrey Hall.

J E F F R E Y R . H A L L , called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Hall, by whom are you employed?

A I am a special agent with the United States Department of Justice, Drug Enforcement Administration.

Q How long have you been so employed?

A Five and a half years.

Q Were you so employed on July 9, 1973?

A Yes, sir.

Q Directing your attention to the afternoon of July 9, 1973, were you on that day in the vicinity of the Market Diner at 43rd Street and Eleventh Avenue?

A Yes, I was.

Q What were your duties on that occasion?

A I was conducting surveillance of a purchase of drugs.

Q At what time of day was this, if you recall?

A About 4 o'clock in the afternoon.

Q What, if anything, did you observe on that occasion?

A I was in a Government vehicle with two other agents and we were traveling south on Eleventh Avenue, and we were stopped at a light directly across the street from the diner. I looked across the street and I observed a man standing on the corner. When the light changed, we drove a block down and made a U-turn and came back and parked

directly across from the diner, in a parking area of a gas station which is right across the street from the diner.

Q Was the man you observed still on the corner at this time?

A Yes, he was.

Q Do you see that man in the courtroom today?

A Yes, sir, I do.

Q Would you point to him, please.

A Sir, he is sitting at the table. He is the last man sitting at the table. He is wearing a brown suit and blue shirt.

MR. STONE: I will stipulate he has identified the defendant.

THE COURT: All right.

Q Do you recall what Mr. Mayet was wearing on that day?

A Yes, sir, I do.

Q What was that?

A He was wearing a short-sleeve shirt, white in color. He was wearing reddish pants.

Q After you parked your car, what, if anything, did you observe?

A I observed Mr. Mayet pacing back and forth on the corner for a few minutes and looking around. And then I

observed him look directly at us, and as soon as he looked directly at us, I saw him go out into 43rd Stret and hail a cab, and get in the cab and drive from the area.

Q Directing your attention to the following day, July 10, 1973, did you have occasion on that day to be in the vicinity of the La Puma Shoe Store in North Bergen, New Jersey?

A Yes, sir.

Q What, if anything, did you do on this occasion?

A I forget the name of the street that the store is on. I believe it is Bergenline Avenue, but I am not sure of the street. I walked toward the store, on the same side of it as the store. And about the time I was at the store, I observed Mr. Mayet leaving the store and walk directly across the street to a car; and I recognized him for the same man that I saw on the corner the day before. And I signalled other agents in a car that was nearby that this was the same man. And I walked up behind him as he got into the car, and the other agents assisted me in arresting Mr. Mayet.

Q After Mr. Mayet was arrested, did you advise him of his constitutional rights?

A Yes, sir, I did.

Q Did he thereafter make any statements to you concerning whether or not he had been in New York City on the

preceding day?

A Yes, sir, he did.

Q What did he say?

A He said he had not been in New York City the previous day.

Q Where, if anyplace, did you go with him from the shoe store where he was arrested?

A We drove to our office, which is on 9th Street and Eleventh Avenue, and as we passed the Market Diner, I told him I had seen him standing on the corner the day before. And he said that he had never been at that diner and that he wasn't in New York the day before.

MR. BUCHWALD: No further questions.

CROSS-EXAMINATION

BY MR. WILLIS:

Q Agent Hall, you were part of a team of Federal officers who investigated this sale of this cocaine; is that right?

A Yes, sir.

Q In your investigation of this particular matter, were you able to determine that Maria Aguilar was in fact an employee of the Puma Fiesta Shoe Store? Just yes or no.

Strike that.

Do you know Maria Aguilar?

A Yes, sir, I do.

Q Repeating the question, were you able to determine that in fact Maria Aguilar was an employee of Mr. Mayet?

A I don't know. I didn't investigate that particular --

Q Do you have any knowledge, due to your involvement with the Government's case, as to whether in fact Maria Aguilar was, on that day in question, an employee of the shoe store?

MR. BUCHWALD: Objection, your Honor.

THE COURT: I will permit it.

THE WITNESS: Yes, I heard that she was.

MR. WILLIS: No further questions.

THE COURT: Mr. Stone?

CROSS-EXAMINATION

BY MR. STONE:

Q Mr. Hall, did you write any reports concerning this case?

A Did I write any?

Q Yes.

A I don't believe so.

Q Any at all?

A I don't believe so.

Q Did you testify before the grand jury in this case?

A I don't believe I did.

Q How many investigations have you been on since July 9, 1973?

A It would be a guess, twenty.

Q In those twenty investigations, have you had occasion to interview many people?

A What do you mean by "many"?

Q Twenty, thirty..

A Perhaps.

Q And you have had occasion to observe things during those twenty occasions; is that correct?

A Yes.

Q And you're testifying in this case from memory; is that correct?

A Yes, sir.

Q Did you review the notes of any other agent before you testified?

A No.

Q Did you review the report of any other agent before you testified?

A No, sir.

Q And you were with Agent Korniloff, were you not, or watching him, on July 9, 1973?

A I saw him on that day.

Q And were you told to watch for any particular type

of person, in the vicinity of the Market Diner?

A No.

Q How many people were on the corner?

A One.

Q How long did it take you to make this U-turn?

A Thirty seconds.

Q What was the total period of time that you had Mr. Mayet under observation on July 9?

A I would say about five minutes, four or five minutes.

Q Were you looking for Agent Korniloff at that time?

A Not really.

Q Did you ever have occasion, in your capacity as a citizen of New York, of trying to get a taxicab?

A Yes, sir.

Q Did you ever pace up and down the street trying to get a cab?

A I can't remember ever pacing up and down the street, no.

Q Did you ever see anybody pace up and down the street trying to get a cab?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q How many cabs did you see pass from the time you first saw Mayet until he got in the cab?

A I don't remember.

Q Did you take the license number of that cab down?

A No.

Q How close were you to the cab?

A Twenty feet.

Q Could you see the license number.

A I probably could have gotten it if I had thought about it.

Q And you remember what Mr. Mayet was wearing that day, do you not?

A Yes.

Q Could you tell us what Agent Korniloff was wearing that day?

A No, I can't remember. I think he had on a sport coat.

Q Do you know what color?

A No, I don't.

Q Do you know what Mr. Roth was wearing that day?

A No, sir, I don't remember.

Q How long did you see Mr. Roth that day?

A I don't understand your question.

Q You know Mr. Roth?

A Yes, I do.

Q How long did you see Mr. Roth on July 9?

A What period of time?

Q Anytime during the day.

A I saw him at the office for quite awhile, I believe.

Q More than five minutes?

A Probably.

Q What was Mr. Shapiro wearing that day?

A He was wearing, I think, some kind of a flowered shirt and blue jeans and some very high-heeled shoes. I think they were white shoes.

Q Do you remember what color the pants were?

A I believe they were like faded blue.

Q Did you interview Mr. Shapiro after his arrest?

A Yes, I did.

Q And he gave certain statements?

A Yes, sir.

Q And he was willing to cooperate with the Government almost immediately after his arrest; is that correct?

A Yes, sir.

Q And were you present when he made some phone calls after his arrest?

A Yes, I was.

Q And did you overhear these phone calls?

A One of them that I recall, yes.

Q Who did he talk to?

A He talked to a man.

Q You don't know who that man was?

A No.

Q Did he ask that man for money?

A I don't recall him asking for money, no.

Q Did you tell Mr. Shapiro what to say when he made those phone calls?

A Yes, I believe I did take part in speaking with him before he made the calls; yes.

Q What did he say?

A During the phone call or before?

Q During the phone call.

A I believe he called up the shoe store, the Puma Shoe Store, and a man answered the phone. And he asked for Candy, and the man said, "Candy isn't here; who is this?" And he said, "This is Harry." And the man said, "Where are you?" And he said that "I am in the city." And he said, "Where in the city?" And he said, I think, "In midtown," or something. I think he said midtown. Then the man said, "Well, Candy is not here." Then I believe the man said, "He will be back at 8 o'clock, try back at 8 o'clock." Shapiro got off the phone and he believed that was Candy that he had just spoken with, but didn't admit that it was him.

Q Did Shapiro call back at 8 o'clock?

A I don't recall. I don't remember if I was there during that second phone call, if he did make it at all.

Q You don't know how many phone calls he made?

A No, I am not sure.

Q Did you eventually seize the narcotic drugs in this case? You or one of your fellow agents.

A One of my fellow agents.

Q Did you take the drugs to the chemist?

A One of my fellow agents.

Q And you remember that; is that correct?

A I don't remember which fellow agent took it to the chemist, but I know the drugs were analyzed, so someone must have had to take them to the chemist.

Q Were you the acting group supervisor at that time?

A I may have been, yes.

Q Do you remember?

A No, I don't.

Q Did you have to approve any reports of any other agents at that time?

A I may have.

Q Of course, when you approve it, you would read it; is that correct?

A Yes, that is correct.

Q And when you fill out an evidence envelope, you fill

as Defendant Mayet Exhibit D in evidence.)

Q Agent Hall, I show you Government Exhibit 3507-A and I ask you if you approved that report?

A Yes, sir.

Q And that report was submitted on what day?

A It's hard to see the date on here. 8/24.

Q Is that what it says?

A 8/24.

Q August 24?

A Yes.

Q This refers to the seizure of drugs; is that correct?

A Let me see that. I don't know if that is the drugs or what.

This is not the drugs. That is non-narcotics evidence there.

Q But you approved that report; is that correct?

A Yes, sir.

Q That only referred to one person's name; is that correct, Harry Shapiro?

A I didn't see how many names were on this. Yes, the file title, Harry Shapiro, right.

Q This was after Mayet had already been arrested; is that correct?

A The file title was still the same, Harry Shapiro.

It is Harry Shapiro et al. That means and others.

Q Of course, you knew Mr. Mayet's full name on July 10; is that correct? Yes or no?

A Yes, I did. When we say et al, we mean all the other people involved in the case.

Q You like to have more than one person involved in the case; is that correct?

THE COURT: I won't permit that question answered.

Q I show you 3507-D and ask you if you approved that report?

A Yes, sir.

MR. STONE: I offer that in evidence.

MR. BUCHWALD: The Government has no objection.

THE COURT: Mark it as the next Defendant Mayet exhibit.

(Government Exhibit 3507-D for identification received as Defendant Mayet Exhibit E in evidence.)

Q Mr. Hall, I show you Defendant's Exhibit B in evidence and I ask you if you have ever seen that before?

THE COURT: B for boy?

MR. STONE: Yes, your Honor, in evidence. That is Defendant's Exhibit B; I am sorry, your Honor.

A I don't believe I have read this report before, no.

Q You were not the approving officer?

A Caffrey, my supervisor.

Q But on July 11 on Government's Exhibit 3507-D you were the acting group supervisor; is that correct?

A Yes, that is correct. I don't believe I signed that report there, though.

Q Is every report that comes through your group on that day supposed to be approved by you?

A No.

Q And you are familiar, are you not, with the rules and regulations of the bureau of narcotics?

A Yes, I am.

Q And you are familiar with the scope of your enforcement?

A Yes, sir, I am.

Q Do you have a special bureau that investigates the narcotic licenses of physicians?

A A special bureau?

Q Or a part of your bureau?

A Yes.

Q That bureau enforces the amount of narcotic prescriptions that any particular physician dispenses; is that correct?

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

A Yes.

Q And you were aware, were you not, in November of 1973 that Susan Marcus' husband was a registered physician?

A I don't know who Susan Marcus is.

Q You never met Susan Marcus?

A No.

Q Is it your testimony that Mr. Mayet was the only individual on the corner in the vicinity of the Market Diner for those five minutes on July 9, 1973?

A He was the only one on that corner.

Q How many other individuals on another corner?

A I didn't notice anyone on any other corner.

Q Who was the agent you drove up with?

A Sullivan was driving and Agent Kennedy was also in the car.

Q Could you tell us what they were wearing?

A No.

MR. STONE: No further questions.

THE COURT: Anything else?

MR. BUCHWALD: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Agent Hall, do you know whether there were other

surveillance agents on July 9, 1973 who actually went into the Market Diner?

A Yes, there were.

Q Do you know who they were?

A I believe Agent Miele was one of them, and I don't remember who the other one was. I think there were two.

Q So there were certain agents who were in the Market Diner and certain agents, including yourself, who were outside the Market Diner; is that correct?

A Yes, sir.

Q After the events which you described on July 9, did all of the agents get together and discuss what had happened? This is on July 9.

A No, not that I recall.

Q Did you ever tell any of the other agents who you had observed outside?

A I told other agents that I was with -- as soon as I observed him, I told the other agents.

Q Do you know if there was a surveillance report written by one of the agents who was either inside the Market Diner or outside the Market Diner?

A I don't know.

Q I show you what have been marked as Defendant Mayet's Exhibits B and E. Do you know whether those were

the only reports written in connection with this case by agents?

A No, there were other reports.

Q Would you know approximately how many?

A In this entire case?

Q That is correct.

MR. STONE: Objection, it is irrelevant.

THE COURT: In view of the cross-examination, I will permit it.

A I would guess about ten reports.

Q I show you what has been accepted in evidence as Defendant Mayet Exhibit D. Is this a report?

A No, sir, it is not.

Q What is it?

A It is an evidence envelope.

Q Does a file number appear on the evidence envelope?

A Yes, sir, a case number.

Q Does the case number appear on the reports?

A Yes.

Q Is there a folder kept in your office with that same case number on it?

A Yes, sir, there is.

Q Is it your practice to have that case folder contain

the names of all the individuals involved in a given case which the folder refers to?

A Do you mean on the folder?

Q On the folder or inside the folder.

A Inside the folder. Somewhere in those reports every person involved in the case will be mentioned or reported.

MR. BUCHWALD: No further questions, your Honor.

THE COURT: Mr. Willis?

MR. WILLIS: No questions.

THE COURT: Mr. Stone?

RE-CROSS-EXAMINATION

BY MR. STONE:

Q Agent Hall, did Harry Shapiro give you any information other than what is concerned in this case?

A No, not that I remember.

Q His sole cooperation with the Federal authorities is his testimoney here; is that correct?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

MR. STONE: No further questions.

THE COURT: Anything else?

MR. BUCHWALD: No questions.

THE COURT: Thank you, Mr. Hall, you may step down.

(Witness excused.)

THE COURT: Next witness.

MR. BUCHWALD: The Government calls Mr. Joseph Sullivan.

J O S E P H C. S U L L I V A N, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Sullivan, by whom are you employed?

A I am a special agent with the Drug Enforcement Administration.

Q How long have you been so employed?

A Approximately the last 18 months.

Q Were you employed as a special agent of the Drug Enforcement Administration on July 9, 1973?

A Yes, sir, I was.

Q Directing your attention to the afternoon of that day, did you have occasion on that day to be in the vicinity of the Market Diner at 43rd Street and Eleventh Avenue?

A That is correct, I was.

Q What were your duties on that occasion?

A On that occasion I was conducting surveillance of our undercover agent who was engaged in purchasing a

quantity of cocaine.

Q What, if anything, did you observe on that occasion?

A On 43rd Street and Eleventh Avenue, I observed a male individual, who was dressed in a white shirt, red pants with a white belt, pacing up and down on 43rd Street, looking in all directions, right outside the Market Diner.

Q Where were you at the time you made these observations?

A At that time I was in a government vehicle, parked across the street at an Esso gas station on Eleventh Avenue off 43rd Street.

Q Was Agent Hall with you on that occasion?

A That is correct, sir, he was.

Q From the time the vehicle was parked in that Esso gas station, how long did you have in which you observed this individual which you described?

A Originally, as Agent Hall and I and Agent Kennedy proceeded down on Eleventh Avenue, proceeding south, we were stopped at a red light at 43rd Street. That was the first time we observed this individual. We then made a U-turn on Eleventh, parked in the gas station, and we observed him approximately five minutes.

Q Do you see the individual you have been discussing in your testimony in the courtroom today?

A Yes, sir, I do.

Q Would you point to him, please.

MR. STONE: I will stipulate that he will identify Mr. Mayet.

THE COURT: All right.

Q What, if anything, did Mr. Mayet do while you were observing him?

A At that time Mr. Mayet was pacing up and down, back and forth, in the vicinity of Eleventh Avenue and 43rd Street and as he was pacing up and down, he was looking in all directions. He appeared to be --

MR. STONE: Objection to what he appeared to be.

THE COURT: Don't tell us what he appeared, just tell us what he did.

A He was pacing back and forth in the vicinity of Eleventh Avenue and 43rd Street, and as he did pace, he was turning his head, looking in all directions.

Q Was he ever facing you directly?

A He did for a short period of time.

Q How long, if you know, did he stand on the corner while you were observing him?

A As I stated, approximately four or five minutes.

Q Then what, if anything, did he do?

A He glanced over at our vehicle and he stared at it

for a few seconds, and at this time he walked from the sidewalk in to 43rd Street and hailed a taxicab. He then entered the taxicab, which made a left on Eleventh Avenue and headed south.

MR. BUCHWALD: No further questions.

THE COURT: Mr. Willis?

MR. WILLIS: No questions.

THE COURT: Mr. Stone?

CROSS-EXAMINATION

BY MR. STONE:

Q How many people were on the corner of Eleventh and 43rd when you arrived?

A On the corner?

Q Yes.

A I couldn't be certain but I believe Mr. Mayet was alone.

Q Did anybody else come on the corner at any time during those five minutes?

A I am not certain.

Q Did you have him under continual observation during those five minutes?

A Yes, sir, I did.

Q Including while you were making the U-turn?

A No, sir. At that time I didn't have him under

surveillance.

Q When you saw him on the corner, did either Agent Hall or you say anything to one another concerning you should watch the individual?

A I remember Special Agent Hall mentioned to me.

Q Did Special Agent Hall have a discription of the individual you were to watch?

A Prior to our arriving on the scene?

Q Yes.

A No, sir.

Q You just decided to watch that person?

A Yes, sir.

Q Of course, when you watched him, you were interested to find out where he was going and what he was going to do; is that correct?

A That is correct.

Q Was he on the same corner of the Market Diner or across the street from the Market Diner?

A He was on the same corner as the Market Diner, 43rd Street and Eleventh Avenue.

Q Right in front of it?

A That is correct.

Q Where were you?

A I was across the street in a gas station across from

the Market Diner, parked at a gas pump there.

Q How many cabs did you see drive down during that period of time?

A I have no idea.

Q And you remember that he was wearing red pants?

A That is correct, I do.

Q What was Agent Hall wearing that day?

A I really couldn't be certain. I believe he had a sport coat on and a tie on.

Q What were you wearing?

A I am not certain. I believe I did have a tie and a sport jacket.

Q Did you see Mr. Shapiro that day?

A Yes, sir, I did.

Q What was he wearing?

A Mr. Shapiro was wearing white shoes with very high heels. He had on a blue pair of slacks and a flowered shirt of some type.

Q Did you have occasion to see Mr. Roth? That is, that day.

A Yes, sir, I did.

Q When did you first see him?

A I think, for the first time, I saw him standing on the steps on the entranceway to the Market Diner.

Q That was before his arrest?

A Before Mr. Roth's arrest --

Q Before Mr. Shapiro's arrest.

A Yes.

Q Did you see Mr. Shapiro on those steps?

A Yes.

Q Did you see Mr. Mayet on those steps?

A No, sir, I did not.

Q Is that when you first arrived in the vicinity of the Market Diner?

A That I --

Q First saw Shapiro.

A Yes.

Q Did you park your car right after that?

A As I say, we were temporarily parked at the pump in the gas station across from the Market Diner.

Q That is when you first saw Shapiro?

A Yes, sir, I believe so.

Q From the time you first saw Shapiro until you made the arrest, did you move your car?

A Yes, sir, I did.

Q How many times?

A Once.

Q Did you look inside of the Market Diner during

that time?

A No, sir, I did not.

Q Then you saw Shapiro actually walk into the Market Diner?

A Yes, sir, I did.

Q And you saw him actually walk in with Roth?

A That is correct.

Q And you saw him actually walk in with Korniloff?

A That is correct.

Q And how long a period of time did you have them under observation on the steps of the Market Diner?

A For a brief period of time. It was a short period of time, approximately 15, 20 seconds.

Q And you didn't see Mayet there?

A I saw Mayet on the corner of 43rd Street and Eleventh Avenue.

Q The same corner of the Market Diner?

A Mr. Roth and Mr. Shapiro were on the steps, the entrance to the Market Diner. Mr. Mayet was on the sidewalk.

Q You saw him then?

A Yes, I did.

Q Mr. Korniloff was on the steps at that time too; is that correct?

A Mr. Korniloff walked across Eleventh Avenue through the parking lot of the Market Diner, briefly met with Shapiro and Roth before all three individuals entered into the Market Diner.

Q He met with them while Mayet was still on the corner?

A That is correct.

Q How long did that meeting take place on the steps?

A For a very brief period of time, approximately 15, 20 seconds.

Q Then you moved your car; is that correct?

A That is incorrect.

Q You kept the car in the same place?

A That is correct.

Q And Mayet remained on that corner?

A That is correct.

Q He never moved?

A As I say, he was continually pacing up and down on 43rd Street.

Q That was the first time that day you saw Roth?

A I believe so.

Q Could you tell us what he was wearing?

A I don't recall.

Q You saw Roth later, after the arrest, did you not?

A That is correct.

Q So you saw Mr. Roth for a period in excess of five minutes; is that correct?

A That is correct.

Q What was the closest you were to Mr. Mayet?

A Actually, the closest in distance would be when I was stopped at the red light on 43rd Street.

Q How far was that?

A I would say approximately 25 feet.

Q Then he got into a cab later; is that correct?

A Then I had made the U-turn and parked in the pump at the gas station, and a few minutes later he entered the cab on 43rd Street.

Q Was it impossible for you to get the cab license?

A Yes, sir, it was.

Q And Agent Hall was also with you; is that correct?

A That is correct.

Q It would have been equally impossible for him to get the cab license; is that correct?

MR. BUCHWALD: Objection.

THE COURT: Sustained.

Q How far away was the cab at that time?

A I would say approximately 25 to 30 feet.

Q Did you see what kind of cab it was?

A I remember it was a yellow cab, heading west on

43rd Street.

Q Wasn't this on Eleventh?

A No, sir.

Q It was the corner of 43rd and Eleventh; is that correct?

A He actually hailed the cab and he walked on the sidewalk to 43rd Street. After entering the cab, the cab made a left turn, heading south on Eleventh Avenue.

Q Were you driving your vehicle at that time?

A At that time I was behind the driver's -- behind the wheel, but our vehicle was stationary at that time at the gas pump.

Q The cab was stopped for a period of time, was it not, while he got in?

A Yes, it was.

Q During that period of time could you have started your vehicle?

A Yes, I could have.

Q But you didn't?

A No, I did not.

Q How long a period of time was the cab stopped?

A I really don't -- as he entered the cab, I am not sure. I would say five to ten seconds.

Q He never ran to the cab, did he?

A No, he did not run.

Q What time of the day was this?

A This was approximately 4 o'clock, 4:05 p.m.

Q Were you present when Mr. Mayet was arrested the next day?

A No, sir, I was not.

Q You work with Mr. Hall?

A That is correct, I do.

Q Did you talk to him about this case?

A Yes. That day we had a discussion of the case in the parking lot of the Market Diner.

Q Was Mr. Roth present?

A As far as I remember, Mr. Roth was seated in the back seat of a government vehicle. He was present in the general vicinity but not present while Agent Hall and I had discussed the happenings of the day.

Q Did you discuss this case with Mr. Hall since then?

A No, sir, I have not.

Q Have you ever discussed this case with an assistant United States Attorney?

A Yes, sir, I have.

Q Did he advise you that you would be called to testify?

A Yes, sir.

Q Did he advise you what questions he would ask you?

A He advised me that I would be asked questions by him relative to the events that had happened that day.

Q Did he go over those questions with you before he called you to the witness stand?

A Not specifically, no. He discussed the general events, what had occurred that day, what I had witnessed and informed me that he would ask questions concerning events before the jury.

Q Was Mr. Hall present at any time that these discussions took place?

A No, sir, he was not.

Q Did you write any reports concerning this case?

A No, sir.

Q Did you look at any other agents' report concerning this case?

A Yes, sir.

Q Which agents' reports did you look at?

A I read Special Agent Magnusson's surveillance reports of the events of that day and also Special Agent Korniloff's arrest report concerning the occurrences of that day.

Q Did Agent Hall also read those reports, in your presence?

A In my presence -- I am sure Agent Hall read the reports. That is the reason why they are written. However, I could not, certainly, say that he read them in my presence.

MR. STONE: No further questions.

THE COURT: Anything else?

MR. BUCHWALD: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Where is the corner of 43rd and Eleventh in relation to the entrance of the Market Diner? Is the entrance to the Market Diner right on the corner?

A Not on the sidewalk it is, no. There is a small parking lot, fitting only one car, which would fit vertically in there. The entranceway is actually a stairway, which would be on Eleventh Avenue.

Q The place where you observed Agent Korniloff meet briefly with Bruce Roth and Harry Shapiro, where is that in relation to the corner of 43rd and Eleventh where you observed Mr. Mayet?

A That would be the stairway leading up to the entrance. It would be directly in front of the vehicle, the area in which I was parked. In other words, directly north.

Q From where you were?

A That is correct.

Q Would the corner be closer to you than the entrance?

A Yes, it would.

Q You testified, did you not, at some point, that Mr. Roth was in a government vehicle in the parking lot?

A That is correct, he was.

Q This was after the arrest of Mr. Shapiro?

A That is correct.

Q In fact, didn't the agents go through a mock arrest of Mr. Roth as well?

A That is correct, we did.

Q What was the purpose of that?

MR. STONE: Objection, your Honor.

THE COURT: Sustained.

MR. BUCHWALD: No further questions.

THE COURT: Mr. Willis? Mr. Stone?

MR. WILLIS: No questions.

MR. STONE: No questions.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Next witness.

MR. BUCHWALD: Might we have that marked as Government Exhibit 6 for identification?

(Government Exhibit 6 marked for identification.)

MR. BUCHWALD: At this time the Government would offer Government Exhibit 6 for identification into evidence.

MR. STONE: No objection.

MR. WILLIS: No objection.

THE COURT: Without objection it will be received.

(Government Exhibit 6 received in evidence.)

MR. BUCHWALD: Might I read the exhibit, your Honor?

THE COURT: All right.

(Government Exhibit 6 read to the jury by Mr. Buchwald at this point.)

MR. BUCHWALD: Your Honor, the Government rests.

THE COURT: Madam Foreman, ladies and gentlemen of the jury, I will excuse the jury now for our luncheon recess. We will meet again at 2 o'clock. You may retire.

(The jury left the courtroom.)

THE COURT: Mr. Willis, have you seen Mayet's Exhibits D and E, the reports? I am just wondering if there are any Bruton problems in those two.

MR. WILLIS: That is what I was looking for before, your Honor. I am taking a look now. I don't see any on D, your Honor.

MR. STONE: D is the envelope.

THE COURT: That is the report.

MR. STONE: But D is the envelope. B is the report.

MR. BUCHWALD: B and E are reports.

THE COURT: All right.

MR. STONE: You struck one paragraph on B.

THE COURT: I guess it is only E that we are concerned with, then.

MR. WILLIS: I didn't find any problems. Your Honor cured E by striking out a section.

THE COURT: If necessary, if it ever has to go to the jury, we can physically take it out.

MR. WILLIS: 3507-D, which is the property of the Court, has no reflection on the co-defendant, so I don't have any problems with Bruton on that one.

THE COURT: All right.

Mr. Stone and Mr. Willis, I would normally, of course, take the case of the defendant first named in the indictment first, unless you have some other order in which you prefer.

MR. WILLIS: That is all right.

THE COURT: Mr. Stone, you told me the other day how long your case would take.

MR. STONE: That is correct.

THE COURT: About an hour?

MR. STONE: Depending on cross. I intend to call the defendant, possibly his character witnesses and possibly

his father. I am not sure about his father. I haven't had a chance to discuss it. Other than the defendant, certainly the character witnesses and his father's direct wouldn't be more than five minutes.

THE COURT: And you, Mr. Willis?

MR. WILLIS: I think Mr. Nesland is going to be called and I have a few questions for him. Other than that, I do not anticipate any witnesses, your Honor.

THE COURT: Is Mr. Nesland trying a case today, or can he be telephoned?

MR. BUCHWALD: He is available by phone. He may not be in his office at every given minute during the day, Is it defense's desire to call him first?

MR. STONE: I will call him first and get him out of the way.

THE COURT: Can you arrange to have him here at 2 o'clock?

MR. BUCHWALD: Yes.

THE COURT: It is possible we may be able to sum up this afternoon.

MR. STONE: I would think so.

THE COURT: Do you want to make your motions now?

MR. WILLIS: I would like to do it right when we return, if you would allow.

THE COURT: Of course. Don't let me forget it.

MR. WILLIS: I won't let you forget it, Judge.

THE COURT: Good.

(Luncheon recess taken.)

AFTERNOON SESSION (2:00 p.m.)

(In open court; jury not present.)

THE COURT: Mr. Stone.

MR. STONE: At this time I would like to move, pursuant to Rule 29, Federal Rules of Criminal Procedure, as to the first count of the indictment, for a judgment of acquittal, and in conjunction with that, moving to strike all the hearsay testimony which was taken subject to connection from the record in this particular case.

Even assuming that the evidence, as you must assume, is taken in the light most favorable to the Government, I think that they have failed to sustain a conspiracy in this particular situation. Even assuming that their evidence is credible from a point of argument, the most they could show out of a prima facie case is aiding and abetting in the second count of the indictment.

Conspiracy is an illegal agreement. It is one of more than a criminal partnership. We have here a situation where there is no criminal partnership among the conspirators but at most a possible -- I am saying only from a possible argument -- aiding one another, if we accept the testimony of Harry Shapiro, which, of course, is a matter for the jury to decide.

But the Court, in determining whether a conspiracy

exists, will want to know whether there is any independent evidence on the basis of acts and declarations of the defendant himself, in order to sustain a prima facie case of a conspiracy.

I maintain there is a total lack of independent evidence in this case by act or declaration of the defendant Mayet as to whether or not any conspiracy existed which would allow the jury to even determine Count 1 of the indictment. I respectfully request that a motion for a judgement of acquittal, under Rule 29, be granted as to that count and all hearsay testimony which was offered into evidence be stricken.

THE COURT: I think that there is sufficient proof, independent of statements of alleged coconspirators, from which a jury can find the existence of a conspiracy. I deny that motion.

MR. STONE: I make the same motion with respect to Count 2.

THE COURT: Same ruling.

MR. WILLIS: Your Honor, rather than be repetitive, I know you want to move on, under the same Rule 29, I ask a judgement of acquittal as far as Count 1. Count 1 says that on or about the first day of May 1973 until July 9, 1973, there did exist a conspiracy -- and it names certain parties,

two of whom aren't present, Shapiro, who is the witness for the Government; Kelly, who hasn't appeared, and the two named defendants involved here. It appears that there has been no testimony at all, none whatsoever, connecting Maria Aguilar to any events prior to that -- after that May 1st, in that period there, not as to July 1, 3, 4, 5, 6; pick a date. The only date we are concerned with Maria Aguilar in this question here is on July 9. There has been conflicting --

THE COURT: What about Susan Marcus?

MR. WILLIS: Susan Marcus' testimony, as I argued on the motion the day before, is contradicted. She remembers in a phone conversation that Harry called and may have spoken to a Maria. But Harry gets on the witness stand, the state's second witness comes in and say that never occurred. It is not my witness that is contradicting, it is their own witness that contradicts the previous witness.

THE COURT: I know, but it's still up to the jury to decide if you are right, and I will assume for present purposes that you are. It is up to the jury to say that we believe Shapiro was mistaken and we accept Susan Marcus' testimony. It is not for me. I certainly will permit you to argue, with the widest latitude, to the jury, but I don't think I would be justified in saying that one witness

cancelled out the other.

MR. WILLIS: I am just raising it because, if you feel the case is weak enough, you can strike it if you want to. In other words, you could give a judgment of acquittal based on the fact that the Government's case just isn't, in its totality, strong enough to go beyond this point. I only raise that as one area that I want to follow through on.

What do they bring in to implicate Maria Aguilar in this particular case? The belief of Harry Shapiro to the act, who never wrote it down in his statement? His belief that he thinks Maria Aguilar is the partner of Candy Mayet, who in fact Harry Shapiro never discussed -- nobody has ever had a discussion, nor has anybody who has testified seen any cocaine in this girl's possession, nor have they established any actual knowledge of the existence of cocaine, either the transferral of it, the knowledge of it, the actual or constructive possession of cocaine. The only thing that the Government has established to this point is the testimony that there was a pocketbook, said pocketbook contained the key to the mailbox of Maria Aguilar's apartment. In that pocketbook was contained cocaine and there isn't any showing that Maria, in the presence of anyone who testified, saw it, absent any testimony that she had actual or even constructive knowledge of the fact that it was there.

And third of all, your Honor, what troubles me most of all about this first count is this conspiracy. Conspiracy, if I understand it, has to show a knowledge. You can't have a conspiracy without knowledge. You can't join a conspiracy without the intention of joining the said conspiracy. Nowhere along the line has the Government proved the facts necessary legally to establish the basis of making Maria Aguilar a conspirator with anyone, anyone but the named Harry Shapiro, who comes into court -- I'm sorry, Judge. If you want to question me.

THE COURT: I was going to say that I think there is sufficient evidence with which the jury can conclude that Miss Aguilar and Mr. Mayet were parties to a conspiracy,and you only need two persons to constitute a conspiracy. I don't think I can withdraw any count from the jury.

MR. WILLIS: I will move on, Judge. Let's let the facts of the record be the basis for the argument.

The second count troubles me a little more than the first, even. In order to be found, under Federal court rules or case law, guilty of possession of a particular object, you either have actual or constructive possession. Along with that, you have to have knowledge and you have to have intention to possess the particular object. If someone slips in my pocket, as I walk out of this court, an object

that is illegal and I am not aware of its presence in my pocket, legally I am not responsible for that item. What do we have against Maria Aguilar? We certainly don't have, at any time in the Government's case, actual possession, because nobody can place in the object they claim she carried, cocaine. It can't be placed.

THE COURT: Except the circumstances of her coming to the shoe store, her going to the back room, if the jury believes that, with Mr. Mayet. The jury could infer that she brought the cocaine herself to the shoe store. It is circumstantial evidence, I grant you. And then, if I remember, Mayet put it in his trousers, on his person, then transferred it to her handbag. And the handbag was between him and her, if the jury believes the testimony, on the ride into New York.

That evidence would at least, or could at least be considered by the jury under an aiding and abetting charge on the second count.

I think I have to let both counts go to the jury as to Miss Aguilar also.

MR. WILLIS: I will let the record speak for itself, Judge.

THE COURT: All right.

Let's get the jury.

MR. STONE: Is Mr. Nesland here, your Honor?

THE COURT: Yes, I think so.

(In open court; jury present.)

THE COURT: All right, Mr. Stone.

MR. STONE: I would like to call Assistant United States Attorney James Nesland, your Honor, on behalf of the defendant Mayet.

J A M E S N E S L A N D called as a witness on behalf of the defendant Mayet, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STONE:

Q Mr. Nesland, are you an assistant United States Attorney?

A Yes, I am in the office of the United States Attorney's office.

Q How long have you been in this office, sir?

A About eight months.

Q Do you know an attorney by the name of Mr. Harold Baer?

A I know of him. I don't know him personally, no.

Q Did you ever interview a Susan Marcus concerning this case?

A No, I did not.

Q Are you aware that Harold Baer at one time was the chief of the criminal division in this office?

A Yes, I know that.

Q Mr. Nesland, I show you Defendant's Exhibit A for identification and I ask if you can recognize that?

A Yes, that is a Xerox copy of a statement that I took down on July 10 from Harry Shapiro.

Q Am I correct that this is in your handwriting?

A Yes, it is.

Q Would you take a look at this, and could you tell by looking at that what time that interview began?

A I have the time down as 11:25. I have no specific recollection. But that is the time I have on it.

Q That was a.m. or p.m.?

A A.M.

Q Could you tell us, on the basis of looking at that exhibit, what time the interview terminated?

A 12:45 p.m. I have down.

Q That was what day?

A July 10, 1973.

Q Before you took that statement from Mr. Shapiro, you were already advised, were you not, that Mr. Shapiro was going to cooperate with the United States Government?

A I was not advised that he was. I had talked to

the agent who had advised me that Mr. Shapiro might cooperate, but he wasn't sure.

Q At any point in that document, did you make any notation as to whether or not he was cooperating?

A Yes, it would have been after the time I took his statement.

Q Was it before you recommended bail to the magistrate?

A I talked with the agent, that is correct.

Q Between the time you took the statement and the time you recommended bail, that is?

A Yes.

Q You recommended what bail, do you remember?

A I recommended a $5,000 personal recognizance bond. I believe it was cosigned by his sister.

Q A personal recognizance bond does not require any amount of money to be put up by the defendant; is that correct?

A No, it does not.

Q Strictly a signature will release him from custody; is that correct?

A Pardon?

Q A signature will release him from custody?

A Of his sister and his own signature. There would be two signatures, I believe, on that bond.

Q Was there any indication that he would cooperate before the interview was terminated?

A Yes, I originally talked with him. I advised him of his rights. I advised him of the charges against him. I told him that "You are sitting here now. You are sitting across the table from the agent from whom you purchased or from whom -- "

Q I don't want to know the conversation. I want to know the conversation concerning you and Shapiro concerning when he decided to cooperate.

A He decided to cooperate after I advised him of his charges.

Q Which was between 11:25 a.m. and 12:45 p.m.; is that correct?

A Sure.

Q Who was present during that interview?

A The only agent I remember is Gregory Korniloff.

Q He was present right next to Shapiro when you interviewed Shapiro?

A I believe he was in the room. I forget where he was.

Q Did you question Mr. Shapiro as to whether he was addicted to the use of drugs or not?

A I would have to look. I have no specific recollection.

It is a standard question. I am sure I asked it.

Q Did you ask him whether he was addicted to anything else?

A I usually asked -- I have no specific recollection but I would assume, because of my standard practice, I asked him if he was addicted to heroin, cocaine, amphetamines, alcohol.

Q I show you Government Exhibit A for identification and I ask if that refreshes your recollection as to any question and answer you had with Mr. Shapiro concerning his addiction?

A He said that he used alcohol.

Q And you put that down next to where it said "addict"; is that correct?

A Yes.

Q That would indicate he was addicted to alcohol, would it not?

A No.

Q But it would indicate that he certainly used a lot of alcohol?

A It would indicate only that he used alcohol, in contrast to other drugs. Basically, that question, as I use it, is, "Do you use heroin? Do you use cocaine? Do you use alcohol? Do you use amphetamine or any other narcotic drug?"

Q Did you ask him who he lived with?

A Yes, I did. I asked who he resided with.

Q Do you remember his answer?

A Yes.

Q What was it?

A I believe at that time he resided with a girlfriend of his.

Q And nobody else; is that right?

A I recall, or I have a recollection but I am not sure whether at that time he told me he resided with Robert Kelly. I know he resided with him, or he told me that.

Q Sometime afterwards?

A I don't recall whether it was during that interview. This doesn't constitute everything he said. These are just a few of the notes.

Q In that interview, did you ask him who he lived with?

A Yes, I said, "With whom do you reside?"

Q What answer did he give?

A He said a girlfriend.

Q Did you ask him what rent he was paying?

A Yes.

MR. BUCHWALD: I will object to the relevancy of this line of questioning.

THE COURT: I will permit it.

Q What answer did he give you?

A $245.

Q Is that a month?

A I can't tell from the answer. I would assume so.

MR. STONE: I have no further questions.

THE COURT: Mr. Willis.

CROSS-EXAMINATION

BY MR. WILLIS:

Q Mr. Nesland, you took a statement from a man by the name of Bruce Benjamin Roth on July 9, 1973, did you not?

A No, I did not.

Q Do you recognize that handwriting?

A Yes, this is my handwriting.

Q Do your recognize the document marked A for identification purposes that I am showing you?

A Yes.

Q Did you take this statement?

A Those are my notes from talking with Mr. Roth, yes, they are.

Q Did you also take a statement from one Harry Shapiro?

May I have that marked for identification purposes.

(Defendant Aguilar Exhibit B marked for identification.)

Q I show you what has been marked D for identification purposes and I ask you to look it over and tell me if that is your handwriting?

A Yes, that is my handwriting.

Q Were you the assistant United States attorney who conducted the initial interviews on this matter? I notice Exhibit A is marked July 9. That is the date of the arrest. Were you involved in the initial investigation?

A Yes, I was.

Q Of Mr. Roth?

A Yes. I didn't investigate Mr. Roth, no. Mr. Roth was an informant.

THE COURT: July 9 was the date of the arrest of Shapiro.

THE WITNESS: The date on that is the date that I put down for the date of the transaction in this case. It has nothing to do with when the interview was taken.

Q When was the interview taken?

THE COURT: With whom?

MR. WILLIS: I am referring to Defendant Aguilar Exhibit A.

A My best recollection is that I interviewed Mr. Roth the night before we presented the matter to the grand jury.

Q How about what has been marked for identification

purposes B, the name on the first sheet reads Harry Shapiro.

A I think that would be the same time.

Q At the same time?

A The night before is my recollection of when these interviews took place.

Q Leaving both of these in front of you so you can refer to them, who did you interview first, Shapiro or Roth?

A Mr. Shapiro.

Q That is from your memory you are testifying now?

A Yes.

Q Where was Mr. Roth when you interviewed Mr. Shapiro?

A I believe all three, Mr. Roth, Mr. Shapiro and Mr. Molina, were at the United States Attorney's office. I interviewed them each separately. Mr. Roth would have been outside the room that I interviewed Mr. Shapiro in.

Q Did you take any precautions at all, that you can tell the jury, to separate at all times Roth and Shapiro while they were in the building giving you statements that evenin?

A I simply had the agents with them.

Q Were there instructions given to the agents by you concerning keeping them apart or not allowing them to give each other information relative to the case? Did you give those instructions or similar instructions?

A I have no specific recollection, but it is my

custom to do so.

Q Being your custom, can you say with any certainty on the witness stand that you did in fact give those instructions as regards Roth and Shapiro?

A I am sure I did.

Q Do you remember doing it?

A I said I don't have a specific recollection. But I am sure I did.

Q Which agent did you give it to?

A It would be Mr. Korniloff.

Q It would be --

A I believe there was another agent but I forget his name. He was the shorter fellow.

Q Thinking of Korniloff, do you remember saying that to Korniloff?

THE COURT: He says he doesn't.

Q You said you interviewed which one first?

A Mr. Shapiro.

Q You have in front of you Shapiro's -- the notes you took from Shapiro. I am turning to page 9 and I want you to explain to me why, off the margin to the left of the statement, that you took -- would you read what you wrote, this section here?

A "Did he see Maria hand leather pocket to Candy?"

Q Did he see Maria hand leather pocket to Candy. Isn't this the statement, "did he"?

A I don't understand the question.

Q You are taking a statment from a prospective Government witness; correct?

A Correct.

Q And you now want to know, did he see Maria take the pocketbook to Candy; is that right?

A I am sorry. Could you repeat the question.

Q This paper that --

A The reason for this, it was taken after the interview. This was a question of mine that I had in my head after everybody had left.

Q After Mr. Shapiro gave you his statement, this is something that came to mind; is that right?

A Right.

Q Did Shapiro see Maria Aguilar take the pocketbook and give it to Cany Mayet, that is the question you had in mind?

A He had told me that she had had the pocketbook on occasion during the period of time that they were in this transaction, but my question to him was whether or not, at the time that Maria took the parking ticket from Candy, whether or not he had any specific recollection that she handed the

pocketbook to Candy. He had said at other times --

I see the question written out by you. Where is the answer?

A He was already gone. I wanted to refresh my recollection to make sure I asked him.

Q You didn't get that answer?

A I did eventually, yes.

Q Now Mr. Roth comes in; is that right?

A That is correct.

Q You have remembered to refresh your memory --

A You are misrepresenting it. This was after all the interviews, not after Harry had left.

Q Let's go to what is marked A for identification, and this is the statement you took from Bruce Roth?

A Correct.

Q And I turn to the third page of that statement and I direct your attention. off the margin once again, to something which is written on the outside of the margin. Would you read that?

A "Maria handed Candy a leather handbag."

Q Who said that?

A Mr. Roth.

Q Mr. Roth said it?

A Yes.

Q Is it contained within the forum of the main body or is it off to the side?

A It is off to the left margin.

Q Would you explain to the jury why this particular matter here is off to the side and then added with a line going into the main body?

A My recollection is that as they talked, I did my best to follow them, but they are talking and all I am trying to do is take notes while they are talking. And if something was said, for example, "Harry or Candy gave girl a parking ticket and she left," and then my recollection is that he said before she left, "Maria handed Candy a leather handbag," so I careted it in.. It was done, to my recollection, at the same time.

Q That was the question that you had forgot to ask Mr. Shapiro and you inserted your question in the line on his statement; is that right?

MR. BUCHWALD: Objection as to the characterization of the previous testimony.

THE COURT: Sustained.

Q I want you to look over this paper.

A There is another caret there.

Q I didn't ask you that question.

I want you to tell me, on this four-page document,

how many times you did that same thing that you just referred to, careted it on the margin?

A Twice.

Q And the first time was where?

A Where I careted in "Bruce Roth's partner was Mike."

Q When you careted it from the margin and tried to incorporate it into the main body, you did this by asking the specific question of Mr. Roth or by his coming out and saying it to you, but you just didn't have time to put it in?

A Basically, I say, "What happened?" And he says it until it sounds to the end of that phrase. And I say, "What happened next? And what happened after that? And what else happened? What did she do? What did he do?"

Q When you asked him specifically about the pocketbook --

A I didn't ask him specifically about the pocketbook.

Q In other words, Mr. Roth, he remembered about the pocketbook being transferred?

A That is my recollection he did, yes.

Q And you didn't have to ask him about it?

A I didn't, no. He is the first time that I had heard that Marie handed Candy the leather handbag.

Q That is Roth giving you that as firsthand information?

A Yes.

MR. WILLIS: May I have the grand jury testimony of Mr. Shapiro and Mr. Roth? That testimony conducted by Mr. Nesland as the United States attorney.

MR. BUCHWALD: I believe these have already been furnished.

MR. WILLIS: May I just have a moment, your Honor, please?

THE COURT: Go ahead.

MR. WILLIS: The only thing I can't find is the grand jury testimony of Shapiro.

MR. BUCHWALD: Here is another copy.

Q Now, sir, when Mr. Shapiro appeared before the United States Grand Jury, were you the United States attorney who was conducting the questioning?

A Yes, I was.

Q. You had met with Shapiro and Roth previous to that date of the grand jury hearing?

A The night before, to the best of my recollection.

Q You had taken a written statement of both of them?

A I had taken notes of their statements, yes.

Q You had familiarized yourself with the case?

A Yes.

Q When you went into the grand jury and asked

specifically Mr. Shapiro about what occurred on July 9, did you have a copy of his statement that you had taken from him?

A I am sure I did.

Q Did you have that with you?

A I am sure I did. It is my practice to use the statement to help me refresh my recollection in asking questions.

Q I direct your attention to what is the grand jury minutes of July 18, 1973, and I am referring to this question here. You asked a question -- you had Mr. Shapiro on in the grand jury --

MR. BUCHWALD: Can we have a reference to the page?

Q Page 10. You asked Mr. Shapiro, "During the time that you were in Michael's showroom -- " I think you are referring to Michael Lorber?

A Yes.

Q "-- and during the time you went to the diner outside of Michael's building, who had the leather pocketbook?" That is the question you asked; correct?

A Yes.

Q And his answer was, "It was back and forth between Candy and Maria," meaning that while they were up in the showroom --

THE COURT: No. I don't want argument as to what

it means.

Q Your next question is, "After Maria left, then Candy had the leather pocketbook; is that correct?

"A Yes."

MR. BUCHWALD: I would object to this piecemeal --

THE COURT: You want to know whether he asked that question and got that answer?

MR. WILLIS: Yes.

THE COURT: He says yes, so let's go on.

Q I go to -- and I am referring to the statement of Mr. Roth here, and the grand jury testimony of Bruce Roth, page 1, it looks like, the third page from the back.

You asked Mr. Roth the following questions:

"Q Did you observe either Harry Shapiro or Candy give the girl what appeared to be a parking ticket?

"A Yes.

"Q And at that time, did you also observe Maria hand Candy a leather handbag?

"A Yes.

"Q Did Maria then leave?

"A Yes"

So you have now coordinated --

THE COURT: No, no, no. I will not permit such questions. All you want to know is, did he ask those

questions and did he get those answers.

Did you, Mr. Nesland?

THE WITNESS: Yes.

THE COURT: Next question.

MR. WILLIS: That is not what I wanted to ask, Judge.

THE COURT: What is it that you want to ask?

Q I want to know whether when Mr. Roth appeared before the grand jury, did you have his written statement with you?

A Yes, I did.

Q And were you attempting to --

THE COURT: I won't permit what he was attempting or not. He was simply asking what happened.

Q Mr. Nesland, who has the responsibility, if you know, in your office, the United States Attorney's office, to recommend leniency on a particular criminal matter?

A I think you would have to be more specific.

Q Well, the particular case of Bruce Roth.

A The United States Attorney's office does not recommend leniency, to my knowledge.

Q Do they make any recommendations on sentencing?

A Yes, they will bring forward, if a defendant being sentenced has cooperated with the Government. They will tell the sentencing judge the cooperation, of what the defendant

has done in this case.

Q To your knowledge, has Bruce Roth cooperated in this case?

A Yes, he was the informant.

Q Did you make a specific recommendation concerning his sentencing to be taken into consideration when he is sentenced?

A No.

Q Do you know who is going to make the recommendation or the suggestion, whatever it may be, in the case of the United States versus Harry Shapiro?

A Who will bring it to the attention of the sentencing judge, his cooperation?

Q Yes.

A The Assistant United States Attorney in charge of the case.

Q Who is that?

A Mr. Buchwald is now.

MR. WILLIS: No further questions.

REDIRECT EXAMINATION

BY MR. STONE:

Q Mr. Nesland, when you finish the statement, does the agent who sits there read and sign that statement, your interview statement?

A I don't believe -- it can go either way. Sometimes they do and sometimes they don't. Generally, I think they scan it.

Q I show you Government Exhibit A for identification and I ask you if a signature of the agent appears there?

THE COURT: Is that Mayet's Exhibit A or Aguilar?

MR. STONE: Mayet Exhibit A.

A It looks like Gregory Korniloff. I can't recognize the handwriting, but he was there.

MR. STONE: No further questions.

THE COURT: Anything, Mr. Buchwald?

MR. BUCHWALD: May I have a moment, your Honor?

CROSS-EXAMINATION

BY MR. BUCHWALD:

Q Mr. Nesland, I show you what has been marked as Defendant Mayet Exhibit A for identification, and I believe you indicated in the direct testimony that your interview with Mr. Shapiro concluded at 12:45. Might I ask you again if you would look at the form and review what the 12:45 time is and if there is another time indicated?

A Yes, that was incorrect. The time of arraignment was 12:45. The interview terminated at 11:45.

Q And it began at 11:25; is that correct?

A Right. I overlooked that.

Q On the evening before the grand jury proceedings -- the grand jury proceeding having been on July 18 -- on the preceding evening you spoke with Mr. Shapiro; is that correct?

A Yes, I did.

Q You spoke with Mr. Roth; is that correct?

A Yes.

Q Who, if anyone else, did you speak with on that evening?

A Michael Lorber and Gregory Korniloff.

Q Did you have occasion to speak with Robert Kelly?

A Yes. Mr. Kelly was there as well.

Q With respect to Mr. Kelly and Mr. Lorber and Mr. Roth and Mr. Shapiro, did you follow the same procedure in writing down summarizations of what they said?

A I tried to keep up with them while they were talking.

Q Do you know whether or not if in the summarizations of what Mr. Kelly said and what Mr. Lorber said you had occasion to also caret information?

A I would have to see them.

MR. BUCHWALD: This is Government's 3503-B, your Honor.

THE WITNESS: Yes, quite a few carets there.

THE COURT: What are you showing the witness now?

MR. BUCHWALD: Let the record reflect that I have

shown the witness Government 3503-B.

Q Which is what, Mr. Nesland?

A These are my notes of the interview with Mr. Lorber on the night before he testified before the grand jury.

MR. BUCHWALD: No further questions.

THE COURT: Mr. Stone?

MR. STONE: No questions.

MR. WILLIS: I have no questions.

THE COURT: Thank you, Mr. Nesland.

(Witness excused.)

THE COURT: Next witness.

MR. STONE: I call the defendant Mayet to the stand.

C A N D I D O M A Y E T , J R . , called as a witness on his own behalf, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STONE:

Q Mr. Mayet, how old are you?

A Twenty-five.

Q Are you married?

A Yes.

Q At the present time, are you living with your wife?

A No.

Q How long have you been separated?

A For the past year.

Q Do you have any children?

A Yes, a daughter, two years old.

Q Where are you currently living?

A With my family at 303, 49th Street, New York City, my mother and father.

Q Who owns the residence you live in?

A My father.

Q Do you pay any rent?

A No.

Q Have you ever been convicted of any crime?

A No.

Q Are you employed?

A Yes, I work for my father.

Q What type of business does your father have?

A A shoe factory and retail store.

Q Where is that factory and store located?

A The factory is located at 311 Mountain Road, Union City and the store is 7315 Bergenline Avenue, North Bergen.

Q Does your father have any other type of business or occupation?

A Yes, he is an accountant. He has an accounting office in New York.

Q Where is that?

A 790, 52nd Street or 53rd Street.

MR. WILLIS: Could you ask the witness to speak up? He is dropping his voice.

THE COURT: Your father's accounting business?

THE WITNESS: 790, 52nd Street.

THE COURT: In New York?

THE WITNESS: Right.

THE COURT: Is it West 52nd, or east?

THE WITNESS: West.

THE COURT: 790 West 52nd Street.

Q Mr. Mayet, where were you born?

A Havana, Cuba.

Q When did you come to this country?

A 1962, October.

Q Where did you go to school, here or in Havana?

A Both.

Q How old were you when you came from Havana?

A Fourteen.

Q Did anybody else in your family come with you?

A My mother, my father, my younger sister.

Q Do you have anybody else besides your sister, any other brothers and sisters?

A No.

Q How old is she?

A Twenty-one now.

Q How long have you worked for your father?

A For the past two years.

Q Before that, where did you work?

A I worked at Jonathan Logan's and Prentice-Hall, and before that, I was going to school in Miami.

Q How far did you go in school?

A I finished my third year in accountin at Fairleigh-Dickinson University.

Q Other than going to school, you have worked all your other free time; is that correct?

A Correct.

Q Do you own an automobile?

A No, my father does.

Q What kind of automobile does he own?

A A 1969 Dodge station wagon.

Q Do you know Marie Aguilar?

A Yes, I do.

Q Is she your girlfriend?

A No.

Q Since your separation from your wife, have you had occasion to date other young ladies?

A Yes, I have.

Q Any other girls by the name of Marie?

A Yes.

Q You dated more than one girl?

A Yes, I have.

Q When you were arrested, do you know how much money you had in your pocket?

A In the neighborhood of $20, I think.

Q When you were arrested, were you in your store all day working?

A Yes, I was at my factory and then I was at the store.

Q Could you tell why you came from Cuba to the United States?

A Political reasons.

MR. BUCHWALD: Objection.

THE COURT: Sustained.

MR. STONE: May I approach the bench, your Honor?

THE COURT: All right.

(At the side bar.)

MR. STONE: I want to inquire as to his past experience with state police as to why he gave certain statements at the time of his arrest.

THE COURT: What past experiences?

MR. STONE: With the Cuban police. The fear he would have of police officials because of his background of what

has happened to him in Cuba.

THE COURT: You mean, to explain the statements that he made?

MR. STONE: My question to him is directed to any police brutality that he was ever subjected to in Cuba, and as a basis of that, did he have any fears of the police here in this country.

THE COURT: Does he admit or deny making the statements?

MR. STONE: He admits to making the statements but that is the reason he gives for making them.

MR. BUCHWALD: We take the position that the latter testimony should come first as to the admission.

THE COURT: Yes, I think, as a matter of order of proof, I think at this moment it would be irrelevant. But if he admits making the statements, then I will permit these questions.

(In open court.)

Q Mr. Mayet, how long have you known Harry Shapiro?

A For about eight months, almost a year; I don't remember.

Q What was your relationship with Harry Shapiro?

A He was my shoe salesman for the factory.

Q How many shoe salesmen did you employ?

A Two.

Q Was he working on a salary or commission?

A Commission basis.

Q During the course of his employment in your store, did you have any occasion to have any arguments with him?

A A few times.

Q When was the last argument you had with Mr. Shapiro?

A We had one on July 9, and after that, we had another argument.

Q What was the argument on July 9?

A I told him that he had to make the deliveries faster. He was taking too much time for himself. He would show up at the factory like at 1 o'clock, 2 o'clock, 4 o'clock, anytime he felt like it, and he was neglecting the customers.

Q On July 9, was there any discussion about going to New York with Mr. Shapiro?

A Yes.

Q How did that come about?

A I had to come to New York to buy some leather and to check the wood at System Lumber Yard, where I buy the wood to make the platform of the shoe. Mr. Shapiro said he was coming to New York, would I give him a ride.

Q Was Maria Aguilar present during that conversation?

A Yes.

Q Do you have any recollection -- well, where did that conversation take place?

A In the front of my store, in my store, Puma's.

Q Who came there first that day, you, Shapiro or Aguilar, if you remember?

Q I remember I had a person working there, my other salesman. He would open the store at around 11 o'clock and then when I arrived, Shapiro was there already, because that day I was shopping with my ex-wife and my daughter, so I came after 1 o'clock, and as I came in, like ten, 15 minutes later, Maria arrived and we went to New York.

Q And you made arrangements to meet with Maria before that?

A Yes.

Q What was the purpose of your asking Maria to be at the store?

A To go buy leather here in downtown New York.

Q Did Maria work for you in any capacity?

A Yes.

Q What capacity?

A She would buy leather, she would pack shoes, she would help me make deliveries. She would stay in the store when the other salesmen weren't around.

Q Did you have an argument with Mr. Shapiro on that

day?

A Yes, I did.

Q Was that before you went to New York or after?

A Before.

Q Did you have any discussion concerning cocaine with Mr. Shapiro on July 9?

A I complained because he would always have cocaine with him and he was a constant user.

Q What did you tell him?

A I told him that he could do it but after work, because he could implicate me.

Q Would you take your hand down from your mouth, it is hard hearing.

Did you give Mr. Shapiro any cocaine on that day?

A No, sir.

Q Have you ever given Mr. Shapiro any cocaine?

A No.

Q Did Mr. Shapiro ever give you any money for any cocaine?

A No.

Q Did Maria Aguilar ever give you any cocaine?

A No.

Q You went to New York; is that correct?

A That is right.

Q Where were you going in New York?

A I was going to go to System Lumber Yard, and before that, to my father's office to get some money to place the order for the wood.

Q For what purpose did Maria Aguilar go with you?

A To buy the leather in New York.

Q Where was the leather, what place was the leather store?

A Spring Street, Spring and Helsted Avenue.

Q You drove over to New York with Mr. Shapiro, and where did you go?

A He asked me to stop at 1411 Broadway because he had to see a friend of his and a possible client for shoes.

Q Did you go up to meet this client?

A I did.

Q What happened?

A We went up and Harry Shapiro, he spoke to the person. They went to, like, the back room and they told me and Maria to wait outside. So we took a look around and we saw the showrooms. And he was getting kind of long, so we told him we were hungry and we were going downstairs to get something to eat.

Q Did you go down and get something to eat?

A Yes.

Q What happened next?

A We ate and then I gave Maria the ticket to get the car out and go get the leather because it was getting kind of late. So I told Shapiro I was going to my father's office and to System Lumber Yard.

Q What did Shapiro tell you?

A That he was going in the same direction.

Q Where did you go?

A We took a taxi and we got off at Eleventh Avenue and 43rd Street.

Q Was that in front of a diner, if you remember?

A Right.

Q Did you attempt to go into the diner with Mr. Shapiro?

A He told me that it was going to take five minutes, whatever he was going to do, and I was in kind of a hurry, so I told him I would wait outside. So he asked me to come in, and I said no. I waited and I see he didn't come out. I grabbed a taxi and I proceeded to go to my father's office.

Q As soon as you were arrested, you then made bail; is that correct?

A Right.

Q Since that time, have you ever seen agents in front of your store?

A Yes.

Q On how many occasions?

A Several times. I could say more than ten.

Q They were watching you?

A Right.

Q You were present in court, were you not, when Susan Marcus appeared on the stand?

A Right.

Q Do you remember her?

A I think she was with Harry Shapiro once in the factory and then they went to the store.

Q During that period when she came in, did you ever give her any cocaine?

A No.

Q Did there come a time when you, Shapiro and Susan Marcus ever sniffed cocaine together?

A Yes.

Q What were the facts and circumstances of that situation?

A In the back of my store, Shapiro took a package, and she offered him some. And he took some, and she took some, and I took some, and then he gave her the package.

Q How many times have you sniffed or sampled cocaine in your life?

A Five, six times at different parties or locations.

Q What were the circumstances?

A I would be at a party and somebody would offer me some, and I would take it. I didn't see anything wrong in doing that.

Q After your arrest, do you remember being questioned by the agents?

A Yes.

Q Do you remember any statements that you made to them?

A No.

Q The next day, after your arrest, you were interviewed by an assistant United States attorney by the name of Walter Phillips; do you remember that?

A I remember somebody interviewing me. I don't remember the name.

Q Did he tell you he was the United States Attorney?

A Yes.

Q And the agent who arrested you, was he also present in the office?

A Yes.

Q Was this approximately 11 o'clock in the morning of July 11?

A I don't remember. Probably.

Q In the morning?

A Yes.

Q That night you went to Federal detention headquarters?

A Yes.

Q And you remember giving certain statements to the United States Attorney the next day?

A I told him --

Q Just answer yes or no.

A Yes.

Q Were some of those statements false?

A Yes.

MR. BUCHWALD: Objection as to the leading nature of the questions.

THE COURT: I will permit it. Overruled.

A Yes.

Q And you were asked about Harry Shapiro, were you not?

A Yes, I was.

Q When, before that time on July 11, did the agents tell you anything about Harry Shapiro?

A When I was arrested, they asked me, you know, like do you have anything to do with Harry Shapiro. And he is accusing you of some drug transaction and different things. They told me that they would send me back to Cuba and all of that.

Q When you were arrested, did any of the agents show

you any firearms?

A Yes, they did.

Q Mr. Mayet, have you ever, while you were a citizen of Cuba, have you had any occasion to experience any action of Cuban police authorities?

A Yes, I have.

Q When did that happen?

A My father was arrested a couple of times there.

Q In your presence?

A Right.

Q How old were you then?

A Twelve, thirteen.

Q Did the police come to your house?

A Yes, they did.

Q Was there any violence as a result of that?

A Yes.

Q What happened?

A They searched the house upside down, looking for anything that would have to do with propaganda against the government. They searched my father and my mother, and they took my father to prison for about a month.

Q Did they arrest any friends of yours, in your presence, while you were a young Cuban boy?

A Yes, they did. My uncle is in jail in Cuba, serving

30 years because of a conspiracy, they say, to overthrow the government there. And I have another uncle who is doing ten years, also.

Q These are political prisoners?

A Right.

Q Did you have any of that in the back of your mind when you gave a false statement to the Assistant United States Attorney?

A Yes, I did.

Q What were your feelings?

THE COURT: I won't permit a question like that.

Q Do you have any money in the bank?

A No.

Q Mr. Mayet, after your arrest, did you have occasion to talk to Harry Shapiro personally?

A Yes, I did.

Q When was that?

A About a week after my arrest, I spoke to him by the Jeno's on 49th Street.

Q By who?

A Jeno's. It's a hamburger stand on 49th Street and Bergenline.

Q Bergenline, New Jersey?

A Right. And another time at my store, also.

Q What did he say to you at that time?

A He said he needed money from me.

Q Did you give him any money?

A No.

Q Were there any threats made to you by Mr. Shapiro at that time?

Q He told me if I will give him money, he would not testify against me in the case and that he could beat the case with money.

Q What did you say to him?

A That I didn't have any money and that I wasn't involved in the case to begin with.

MR. STONE: No further questions.

CROSS-EXAMINATION

BY MR. WILLIS:

Q Mr. Mayet, how many employees are there in the company?

A Fourteen.

Q Does that include the factory and the store?

A Right.

Q How many of the 14, excluding yourself and Maria Aguilar, have Cuban or Spanish descent?

A Eight to nine.

Q Eight to nine?

A Yes.

Q Including yourself and Maria, then, on July 9, 11, approximately, out of 14?

A Yes.

Q Mr. Shapiro, you said, was your salesman?

A Right.

Q Who interviewed him? Who decided to hire him?

A Mr. Shapiro?

Q Yes.

A He was a salseman and he came into my retail store before I was manufacturing, and he was selling clothes to me, so I told him I was thinking of manufacturing. And he told me he had a clientele built up, that he knew a lot of people in stores, so I decided to hire him when I started manufacturing.

THE COURT: You hired him, I take it?

THE WITNESS: I spoke to him and then I spoke to my father about it.

Q Approximately when did you hire Shapiro?

A I think around October of last year.

Q October?

A Yes.

Q How would you pay the man?

A On commission sales.

Q Was he a good salesman?

A He was mediocre, you know. Sometimes he would work good for a week or two and then he wouldn't take care of the sales.

Q How soon after you hired him did you find out of his involvement, or alleged involvement, in drugs?

A About a month later, I think.

Q How did you find out?

A He told me that he could get, like, ups or cocaine. That he had a medical prescription for the ups and he could get cocaine.

Q He said he could get cocaine?

A Right.

Q Did he ever ask you to try it?

A Yes, he did.

Q Did you?

A Yes.

Q Did you ever see him take coke?

A Yes.

Q How many times?

A Plenty of times.

Q You said there was some bad feelings between you and Shapiro?

A Yes.

Q Tell me what they were about, what caused the problems?

A Most of the mornings he wanted a higher percentage on the commissions and because I would get after him because he would come late.

Q Did you hear Mr. Shapiro testify in this courtroom that for a period of time he walked out on the business?

A Yes.

Q Did he walk out or was he fired?

A He was fired.

Q Who fired him?

A I did.

Q Did he return?

A Yes.

Q Were certain conditions set or certain things that he had to do or not do in order to return?

A Right.

Q What were they?

A That he had to be there on time, spend more time in the factory and to do less drugs while he was working, his working hours.

Q What was your specific job as regards the shoe store or shoe factory?

THE COURT: Which is it, the shoe store or factory?

MR. WILLIS: The shoe factory.

Q Did you have any responsibilities with the factory?

A Yes.

Q Tell the jury what they were.

A I would make sure to get the time right. I would prepare the payroll. I would take care of the sales, buy the lumber, meet new customers.

Q How about the store?

A I would supply the store.

Q Who hired Marie Aguilar?

A My father and myself.

Q Did you know Maria before you hired her?

A Yes, I did.

Q When was she hired to work in the store?

A Sometime in March or April.

THE COURT: Did she work in the store or in the factory?

THE WITNESS: Both places.

Q What did she do specifically?

A She would help me to buy leather. She would pack shoes. She would take care of the factory while I was out, make sure nobody would steal any merchandise. She would stay at the store when the other salesmen were on the road, different functions.

Q Are you or were you, on July 9, the boyfriend -- and by that I mean did you date and go out socially -- of Maria?

A No.

Q Did you hear Mr. Shapiro testify in this courtroom that he had a little party or social gathering at his apartment?

A Yes.

Q And did you hear him tell the jury that you arrived arm in arm with Maria?

A Yes.

MR. BUCHWALD: Objection to the mischaracterization and misstatement of the testimony.

THE COURT: I don't know whether it is or not but I have to sustain the objection as to form.

Q Did you hear Mr. Shapiro testify concerning the party he had?

A Yes.

Q Did you hear him refer to the way in which you came with Maria into the apartment?

MR. BUCHWALD: Just refer to it. Did you hear Shapiro refer to his arriving with Miss Aguilar. That is all he said. I will permit that.

Q How did you arrive at the party with Miss Aguilar?

A I arrived at the party with Miss Aguilar with two or three other persons but not together or holding hands or anything like that.

Q Did you ever discuss with Mr. Shapiro the fact that Maria Aguilar was your partner in a cocaine business?

A No.

Q Did you ever discuss the sale of cocaine with Mr. Shapiro?

A No.

Q How long have you known Maria?

A For four, five years.

Q Where does she live?

Strike that.

Where did she live on July 9, 1973?

A Cliffside Park.

Q With whom did she live?

A With her daughter.

Q How old is her daughter, if you know?

A Four, five years old.

Q Was she living with you?

A No.

Q On July 9, you heard Mr. Shapiro testify things that occurred in your store?

A Right.

Q You said you arrived there alone?

A Right.

Q Did you see Maria enter the store?

A Yes, I was there when she came in.

Q Was Shapiro there?

A Yes, he was.

Q Did you and Maria go into a back room?

A No, we did not.

Q Do you see this pocketbook?

A Right.

Q That has been marked Government Exhibit 3 in evidence.

A Yes.

Q Do you see this pocketbook?

A Yes.

Q Do you recognize it?

A Yes.

Q Who had the pocketbook before you left for New York? Who possessed that pocketbook?

A Harry Shapiro.

Q Had you ever seen Shapiro with a pocketbook before that date?

A Yes.

Q What kind of pocketbook?

A He had a shoulder bag, more or less the same color,

in green, made out of material.

Q Do you know whose pocketbook that is?

A No.

Q You have heard, while sitting in this trial, reference to the fact that keys were found in it and that those keys fit the mailbox of Maria Aguilar. Do you know if that pocketbook belonged to Maria?

A No.

Q Was there any discussion, at which you were present, between Maria and Harry Shapiro concerning that particular pocketbook?

A I think that that Monday, as I was leaving, she was arguing something with Harry with the pocketbock. The person that would know is the other person that was in the store. I wouldn't know.

Q When Maria entered the store on July 9, was she carrying that pocketbook?

A No.

Q Who had it?

A Harry Shapiro.

Q Describe the pocketbook, if you remember, that Maria Aguilar had.

A I don't remember well but I think it was bigger than this oneand it was chocolate brown and not this color.

Q You heard Mr. Shapiro say that you went into a back room with Maria?

A Yes.

Q And that when you came out of the back room, there was an object sticking out of your pocket; do you remember that?

A Yes.

Q Was there an object sticking out of your pocket?

A No.

Q Did anyone remove cocaine from that particular pocketbook and give it to you?

A No.

Q Did you ever see cocaine in that pocketbook?

A No.

Q Did you hand that pocketbook to Harry Shapiro --

A No.

Q -- at any time during the day or night of July 9?

A No, I never touched that pocketbook.

Q Did you leave the store together with Maria?

A Yes, we did.

Q And on the way to New York, how were you seated in the automobile? Who drove?

A I was driving.

Q Who was in the front seat with you?

A Maria was in the middle and Harry was on the side, I think. I don't remember well how we were sitting.

Q Who, if you remember, had possession of that pocketbook on the way to New York?

A Harry Shapiro.

Q Was there any discussion between you, Shapiro and Maria concerning his possession of that bag?

A No.

Q When you got to New York, who parked the automobile?

A I did.

Q Where did you park it?

A Underneath 1411 there is a parking lot there in the building.

Q Who took, if anyone, the parking ticket?

A I did.

Q What did you do with it?

A I put it in my pocket.

Q Where did you go? And who was with you when you went?

Strike that.

Did you eventually go to 1411 Broadway?

A Yes.

Q Had you ever been in that building before?

A No.

Q Did Mr. Shapiro go with you?

A Yes.

Q Did there come a time when -- was Maria Aguilar with you?

A Yes.

Q Did there come a time that Mr. Shapiro left you and Maria?

A Yes.

Q Tell the jury when that occurred.

A When we got upstairs, he had to speak to a friend of his who was waiting already so he told us to wait outside.

Q Where did you wait?

A We waited outside and then we went downstairs to get something to eat.

Q Did you recognize any of the men who came in and testified as being any of the men that you saw at 1411?

A No, I don't remember the faces.

Q Did you have any discussions with any of these guys?

A No.

Q When you left 1411, you said you went down to get something to eat?

A Right.

Q Did Shapiro go with you?

A No, he came down later.

Q Who was with you while you were eating?

A Maria.

Q What was the reason for Maria coming into New York with you and Shapiro?

A To buy leather.

Q Where was she going to buy leather?

A At Minerva Leather Company, located at Spring Street here in New York.

Q What were you going to do?

A I was going to go to System Lumber Yard to check the lumber.

Q Check the lumber for what?

A For the shoes, because sometimes it would crack, the wood, so I had to complain about the pine.

Q You were going for lumber and Maria was going for leather?

A Yes.

Q What was the reason that Shapiro wanted to come to New York with you and Maria, did he tell you?

A He said he had to meet a friend in New York.

Q You said that you and Maria were at the restaurant. Do you know what Harry Shapiro was doing?

A No.

Q Did he have that pocketbook with him?

A Yes, he did.

Q Did there come a time when you saw him at the restaurant?

A Yes.

Q Did he still have the pocketbook?

A Yes.

Q Was he with anyone?

A With another fellow.

Q Did you recognize any of the fellows in here as being the man he was with?

A No.

Q Did there come a time when you gave the parking ticket back to Maria?

A Yes.

Q Did you send her for leather?

A Yes.

Q Did you remain with Harry Shapiro?

A Yes.

Q And some other fellow?

A Yes.

Q Did you ever hand that pocketbook to Harry Shapiro?

A No.

Q When you were in the taxicab, how many people were

in the cab?

A Three.

Q Who hailed the taxicab?

A I think it was Harry or the other fellow. Either one of them.

Q Where did it go, to the Market Diner?

A 43rd and Eleventh Avenue.

Q When it got to 43rd and Eleventh Avenue, what did you do?

A We got out of the taxi and they proceeded to enter the diner, and I was in the corner because I had to go to System. And before that, I had to go to my father to get some money to place the order for the lumber yard.

Q To pick money up from your father?

A Right.

Q Were you early or late?

A It was kind of late already.

Q Did you agree to wait for Shapiro?

A I told him I would wait for three to five minutes, because that is what he told me it would take to come out.

Q Did you wait three to five minutes?

A Yes.

Q Did he come out?

A No.

Q What happened?

A I don't know. I just took a taxi and I went to my father's office and then I went to the lumber yard.

Q There came a time when you returned to Union City?

A Right.

Q How did you get back to Union City?

A I took a bus at the Port Authority.

Q You say Mr. Shapiro contacted you?

A Yes.

Q After July 9?

A Yes.

Q Where did he meet with you?

A At the Jeno's and at my store.

Q Jeno's Hamburgers?

A Right.

Q Where is that located?

A 49 and Bergenline.

Q How close is that to your house?

A One block away

Q Had you ever been there with him before?

A No.

Q Did you question him why you should meet him at Jeno's?

A Not really. He told me because it would be crowded

and he wanted to discuss something with me.

Q He said it would be crowded and he wanted to discuss something with you?

A Yes.

Q Were you curious? Did you want to know what he wanted to talk to you about?

A Yes.

Q Were you aware or had anyone told you that Harry Shapiro had named you or talked about you to the United States Government?

A Yes, my lawyer told me that.

Q When you met at Jeno's, did you confront Mr. Shapiro with that?

A Yes.

Q What did he have to say?

A He said that it wasn't true and that he wasn't giving any testimony against me, that all he needed was money to buy the case out.

Q He needed money for what?

A To buy the case, to pay whoever he had to pay.

Q Did you give him any money?

A No.

Q How much money did he ask for?

A I think it was in the neighborhood of two or three

thousand dollars.

Q Did you have two or three thousand then?

A No, I did not.

Q Did he also tell you or did you become aware of the fact that he had given information about Maria Aguilar?

A I wasn't sure, but I thought he did.

Q Had Maria been arrested by that time?

A Not that I know of.

Q You say that you had used cocaine; is that right?

A Yes.

Q How did you use it?

MR. STONE: I would object. I don't know whether this is cross-examination or his witness now.

THE COURT: Does it make any difference? If he wanted to make him his witness, can't he?

MR. STONE: I really don't know the answer.

THE COURT: I don't adhere to that notion about you can't impeach your own witness. I don't make any distinction.

MR. WILLIS: I don't think it was brought out already by the witness on his direct.

THE COURT: I will permit it.

Q You say that you have used, on occasion, cocaine?

A Yes.

Q Who supplied you with the cocaine that you used?

A Most of the time it would be Harry.

Q Have you seen or spoken to Harry Shapiro within the last three months?

A No. Not that I can remember.

Q Is Maria Aguilar your girlfriend today?

A No.

Q Are you still in the shoe business?

A Yes.

Q Does Maria still work for you?

A Not at this time, no.

Q I am going to show you what is 1-B in evidence and ask you if in your lifetime you ever saw that stuff?

A No.

MR. WILLIS: No further questions.

THE COURT: Mr. Buchwald.

CROSS-EXAMINATION

BY MR. BUCHWALD:

Q Mr. Mayet, you testified, did you not, that you drive a station wagon or have driven a station wagon?

A Yes.

Q Do you know the color of the station wagon?

A Green.

Q Did you drive with Susan Marcus in that station wagon?

A I think I gave her a ride from the factory to the store once.

Q How long have you known Marie Aguilar?

A For the past four, five years.

Q Where did you first meet her?

A Back when we were going to school, I think.

Q When was that?

A 1968, '67.

Q Where was that?

A West New York, Memorial High School.

Q Do you call her Maria?

A Yes.

Q Do you know where she lived on July 9, 1973?

A Cliffside Park.

Q Had you ever been to her apartment?

A I think a couple of times, yes.

Q Prior to July 9, 1973, do you recall the last time you were there?

A No, I do not.

Q What is her job at Puma?

A It is not at Puma. It's the combination of the two businesses, between the factory and the store. She had various functions, as I have explained before. She would pack shoes, buy leather. I would send her to get me some

supplies, stay at the store sometimes.

Q When you were out of the store, was he in charge?

A Sometimes.

Q How many days a week did she work?

A Five, sometimes six.

Q Where did she stay, at Puma or Fiesta?

A Both. It depends.

Q What were her hours?

A From around nine to five, nine to six. She didn't really have any specific hours, you know, but from nine until when we finished.

Q How long have you known Harry Shapiro?

A For about eight months to a year.

Q And you hired him?

A I met him and I spoke to him and then I spoke to my father and we made a decision to hire him.

Q In those eight months to a year that you have known him, have you socialized with him quite a bit?

A A few times.

Q Where was that?

A At his apartment or he would take me to a nightclub or two that he knew about in New York.

Q How many times have you been to his apartment?

A A couple of times, two, three times, maybe more.

Q Have you ever seen cocaine at his apartment?

A Yes.

Q How many times?

A A few times.

Q Have you ever used cocaine at his apartment?

A Yes, he did.

Q How many times?

A Whenever I saw him with cocaine.

Q Whenever you saw himwith it, you used it?

A I used it? Sometimes I would use it. Other times I would not. It depends on the state of mind I was in.

Q On these occasions when you were at his apartment and you used cocaine, who else was present, if anyone?

A Just Harry and sometimes his girlfriend, but most of the time, Harry alone.

Q Were you having parties with him at his apartment?

A Once he had a party.

Q But these times when it was just you and he and sometimes his girlfriend, were those parties or just visits?

A Those were visits.

Q And on this occasion at the party, you say you went to Harry Shapiro's house?

A To his girlfriend's apartment.

Q To his girlfriend's apartment, and where was that?

A 5601 Boulevard East.

Q Who did you go with, if anyone?

A With Maria and three or four other friends of ours.

Q What are their names?

A I think one is Gonsalo. The other one is Joe and his girlfriend. I don't remember her name.

Q Did Gonsalo or Joe work at the shoe store?

A No.

Q Do you know their last names?

A I can't remember now. I don't recall.

Q Have you ever met Bobby Kelly?

A I don't know who Bobby Kelly is until I see him, you know, because I don't know the person by the name. Maybe if I see the person, I recognize the person, but I don't know who he is up to now.

Q This apartment that you went to at the time of this party, whose apartment was that?

A Harry's girlfriend.

Q Do you know whether Harry lived at that apartment?

A He used to stay every once in a while but he didn't live there.

Q Do you know if anyone else lived at that apartment?

A I think her girlfriend.

Q Did you ever call Harry Shapiro at that apartment?

A Sometimes, yes.

Q How did you get the phone number?

A He gave it to me.

Q And on any occasions when you called that phone number, did you ever speak with anyone else at that apartment?

A His girlfriend.

Q Did you ever speak with anyone else?

A Her roommate.

Q Did you ever speak with anyone else?

A Sometimes people used to be there, different people used to answer, I don't know.

Q Did you ever meet anyone who Harry introduced to you as his roommate?

A Yes.

Q When was that?

A Sometime in the summer, I think it was, at the beginning of May, June, somewhere in that neighborhood.

Q Do you remember the roommate's name?

A I don't remember too well. I know he has blonde hair and he is sort of tall.

Q When was the last time you saw this roommate?

A I think I saw him last night, as a matter of fact.

Q Last night?

A Yes.

Q Where was that?

A At a place called Mr. Dee's.

Q Excuse me?

A A place called Mr. Dee's.

Q Where is that?

A East Patterson, New Jersey.

Q What kind of place is that?

A It's sort of a nightclub for young people.

Q Before you went there, did you know you were going to see him up there?

A No.

Q Did you talk to him last night?

A I think he said hello to me.

Q Did you say hello to him?

A Yes, I just said hello and left.

Q And you recognized him?

A Yes.

Q Before that, when was the last time you had seen the roommate of Harry Shapiro?

A I can't recall.

Q Did you see Harry Shapiro's roommate on the day Harry was arrested?

A I don't recall. Maybe I did but I don't remember.

Q Did you call Harry Shapiro's roommate on the night

Harry was arrested?

A No, I did not.

Q Did you ask Harry Shapiro's roommate to come meet you in New Jersey on the night Harry was arrested?

A No.

Q Did you tell Harry Shapiro's roommate to tell Harry to keep you out of it, make sure you didn't get involved?

A I did not.

Q Incidentally, do you own any red slacks?

A No.

Q Have you ever worn any red slacks?

A Yes, I have, probably.

Q How long have you been separated from your wife?

A For the past year, I think, about a year.

Q In that year, you dated frequently?

A Yes, I have.

Q Do you have any other Marias who work at the Puma?

A No, but I dated a couple of girls named Maria.

Q What are their last names?

A One is Delgado and the other one, I can't remember but I think it's Perez.

Q When was the last time you saw Maria Delgado?

A I think Saturday.

Q This past Saturday?

A Yes.

Q When did you meet her?

A When?

Q When did you first meet her?

A About two years ago.

Q When was the last time you dated her before this Saturday?

MR. STONE: Objection. I don't think this is relevant.

THE COURT: I will sustain the objection.

Q Do you know where Maria Delgado lives?

MR. STONE: Objection.

THE COURT: I will permit that.

A 238, 47th Street in Union City, I think. I don't recall the exact address. It is in that neighborhood.

Q When did you last see Maria Perez?

A About six, seven months ago.

Q Where was that?

A She went by the store to buy some shoes and then I asked her for a date.

Q The day you met Susan Marcus, do you recall when that was?

A No.

Q Do you recall approximately the month that it was?

A No. They said it was June but I couldn't recall.

Q Where did you first meet her?

A She came to my factory with Mr. Shapiro. They came to my factory.

Q What did she say to you and what did you say to her at that factory?

A I just said hello to her.

Q Did Harry say anything to you about Susan Marcus at the factory?

Q Yes, that she was rich and her husband was a psychiatrist. He could get prescription drugs from him.

Q Harry told you that?

A Right.

Q Did you ask him why he told you that?

A No. He would just come out and say it. He was like that.

Q What did you say when Harry told you that?

A That it was good for him.

Q Did you ask her why she was at your factory?

A No.

Q Did she tell you why she was at the factory?

A No.

Q How many people were working at your factory that day?

A Approximately ten, 12 perhaps were there.

Q Were there many occasions when people would just come into your factory and stay in your factory?

A Sometimes Harry would bring some of his girlfriends there and they would wait for him. He would tie up the shoes and go make the deliveries and he would take a girlfriend with him along.

Q Did you then go someplace with Susan Marcus?

A Yes, we went to my store.

Q How did you get to your store?

A In my car, I drove there.

Q Did you talk to Susan Marcus at all at that time?

A Not that I remember.

Q Then you got to the store?

A Yes.

Q Did Susan Marcus come into the store?

A Yes.

Q How long was she there?

A I can't remember exactly.

Q Was it a long time or a short time.

A I think it was around 20 minutes but I don't remember.

Q Were you there the whole time?

A I was there for awhile and then I went out.

Q Did you tell Harry Shapiro where you were going?

A No.

Q Where did you go?

A I went to get some supplies and things for the store and things for the factory, you know, paint and all that for the next day at the factory.

Q What time of day was that?

A Around 5 o'clock, I think it was, 6 o'clcock.

Q Did you come back to the store?

A Yes, I did.

Q Was Susan Marcus still there?

A Yes.

Q Did you ask her what she was still doing at the store?

A No. I never mind when another one of my friends is with a girlfriend. As long as they are behaving, and besides that, there was another person taking care of the store at the time. I didn't mind that they sat there.

Q That other person wasn't Maria?

A No.

Q She wasn't at the store, was she, when you left?

A No.

Q You left Harry in charge of the store while you were gone?

A Excuse me?

Q Did you leave Harry in charge of the store while you were gone?

A No, I left a girlfriend of mine that was there at the store.

Q What was her name?

A Janet.

Q And then you came back to the store?

A Yes.

Q Then did you go into the back room of the store?

A Yes, I went to the back room with Harry and his girlfriend.

Q Was something said by you or Harry or Susan to the effect that you should go to the back room of the store?

A Yes, Harry told me, "Let's go to the back of the store," because he just got some cocaine.

Q He told you he had just gotten some cocaine?

A Right.

Q And the store was still open now, was it not?

A I think it was.

Q These were still store hours, were they not?

A I think it was.

Q As a precondition to rehiring Harry, you had told him not to use cocaine during store hours; had you not?

A But he wasn't working at the store. It was the other girl working, Janet.

Q It was all right for him to use cocaine in the store as long as it wasn't while he was working; was that the condition you set for him?

Q As long as it didn't hurt me that he would be making a delivery and have an accident because he was under the influence of drugs or something like that, I didn't care.

Q Harry told you he had cocaine; is that right?

A Right.

Q Then what did you say?

A He told me to go to the back of the store and I went along with him and Susan.

Q This was after he told you he had the cocaine?

A Right.

Q When you got to the back of the store, what, if anything, did you do?

A Harry took a package, and I tried and the girl tried and Harry tried it.

Q Where did Harry get the package?

A From one of his back pockets, I think.

Q Before today, did you ever speak with Mr. Willis about this case?

A Yes, I have.

Q Did you tell him what you were going to say here today?

A Yes.

Q You stated, did you not, that after you were arrested you made bail?

A Yes, I did.

Q Did you have to put up any cash to make bail?

A No. My mother and my father had to sign the property of the house for me to go out.

Q Was a bond set?

A I think it was, I don't know.

Q Other than at Harry's apartment, were there other times that you socialized with him?

A I would go to a nightclub and he would be there and we would speak for awhile, and I would say hello to him and talk for awhile.

Q Did you have cocaine with him at those nightclubs?

A Excuse me?

Q Did you ever have cocaine?

A Myself?

Q Did you ever use cocaine at those nightclubs with him?

A Sometimes.

Q He would give it to you?

A Yes.

Q And what would you do with it?

A Snort it.

Q At the nightclub?

A Yes, in the back room or outside. He would take me outside and we would do it outside.

Q Let's get to the morning of July 9. What time did you get to work that day?

A At around 1 o'clcok, or after that.

Q Had you been at either Fiesta or Puma earlier that morning?

A No, I was with my wife and my daughter shopping that day.

Q Were was that? This was in the morning that you were shopping?

A Yes, at around 9, 10 o'clock.

Q Had you told Harry before that that you were going to do shopping with your wife that morning?

A No.

Q So you weren't at your house that morning?

A Excuse me?

Q You were not at your house that morning; is that correct?

A Correct.

Q Where did you go to first, to Fiesta or to Puma?

To the factory or to the shoe store?

A After I finished shopping?

Q Yes.

A I went directly to the store.

Q Did you come back to the store by car?

A Yes.

Q Where had you come from, precisely? You came to the store, and where did you come from?

A From the Bergen Mall.

Q From where?

A From the Bergen Mall in Bergen County, New Jersey.

Q Is that where you had been shopping?

A Yes, we went around to different stores.

Q When you got there, who was in the store?

A Al Turdo, who was working that day at the store. He is my other salesman. And Harry was there. And then I arrived.

Q When you came into the store, did Harry say anything to you?

A No.

Q Did you say anything to him?

A Yes, that he had to make a delivery of shoes in Brooklyn later that afternoon.

Q You told him that he had to go to Brooklyn later

that day?

A Right. To deliver some shoes to Bruberg Boutique in Brooklyn.

Q Did he say anything to your?

A Yes, that he would do it later.

Q He said he would do it later?

A Right.

Q Then what happened?

A Then Miss Aguilar came in and then we went to New York. And Harry said if he could come along too, and we came to New York.

Q Did you ask Harry why he was coming into New York?

A Yes.

Q What did he say?

A That he had to meet a friend in New York.

Q What time of day was this?

A In the afternoon, 2 o'clock, 3 o'clcok.

Q Did he say what he had to meet the friend about?

A No.

Q Did he tell you he would go to Brooklyn after that?

A Yes.

Q What did you say to him when he said that?

A I said okay.

Q How was he dressed on that day?

A I don't remember.

Q But you remember he had a pocketbook with him?

A Yes, because it would stand out always on him, you know.

Q Did you tell him that he should continue to carry that pocketbook with him when he made his delivery in Brooklyn to your customer?

A Excuse me?

Q Did you tell him that he should continue to carry that pocketbook with him when he made his delivery in Brooklyn to the customer of your shoe store?

MR. STONE: Objection.

THE COURT: I will permit it.

A I didn't make any suggestions as to that.

Q So Harry said he was going to see someone?

A Right.

Q Did he say what it was about?

A No.

Q Did he say how long he was going to talk to that person?

A Not really. He told me it wouldn't be long. He didn't specify the time.

Q Did he tell you the name of the person?

A No.

Q Did he tell you, while you were still in New Jersey, where this person was?

A 1411 Broadway.

Q Was this before or after Maria came in?

A That he told me that?

Q That is correct.

A I can't remember.

Q When Maria came in, did you have a discussion with her?

A Yes, I told her that she was kind of late, you know, that we had to go to New York, and still had to see the lumber, get money from my father also and buy the leather.

Q You told her all those three things?

A Yes. She knew that beforehand that we had to buy supplies for the factory.

Q How did you come into New York?

A Through the Lincoln Tunnel.

Q In the car?

A Yes.

Q You drove straight up to 1411 Broadway?

A Yes.

Q Where is that located?

A I think 30-something street.

Q What time did you get to New York?

A I can't recall exactly. I don't know. It could have been 1, 2, 3 o'clock. I can't remember.

Q Did you drop Maria off anyplace?

A No. I parked the car underneath the building.

Q You parked the car in the garage?

A Right.

Q Then what did you do?

A We got out of the car and Harry went upstairs to meet his friend.

Q Did Harry say anything at this time as to who he was going to see?

A No.

Q Did you ask him at this time who he was going to see?

A No.

Q Did you ask him how long he would take?

A Yes.

Q How long did he say?

A Five minutes.

Q Did Maria, in your presence, ask him who he was going to see?

A No.

Q Did you go upstairs then to the 17th floor?

A Yes, we did.

Q The three of you together in the elevator?

A Right.

Q You walked out of the elevator and into the hall?

A Yes.

Q How long was he gone for?

A I think five minutes, ten minutes; I don't remember exactly.

Q Then he came back?

A Yes.

Q And he had someone with him?

A Yes.

Q And then the four of you went downstairs to the cafeteria?

A First, I think, to the best of my memory, that me and Maria went downstairs because he said he had to talk to his friend a little more in private. We went downstairs because we were hungry and then they came back later, sometime later.

Q So you didn't meet his friend at the elevator?

A Yes, I met his friend upstairs.

Q Then what happened?

A Then Maria and myself, we went downstairs to get something to eat.

Q Did Harry say where he was going to go?

A No.

Q Did Harry's friend say where he was going to go?

A No.

Q And then you and Maria then went down to eat?

A Right.

Q Did you tell Harry how long you would be?

A No.

Q Did you tell Harry the name of the restaurant?

A The cafeteria downstairs, you know, whatever it was.

Q Did you tell him where he should meet you?

A I told him I was going downstairs to eat.

Q Did Maria tell him the name of the restaurant you were going to?

A No.

Q So you and Maria went down alone?

A Yes.

Q At that time, who had the pocketbook?

A Harry.

Q Harry was carrying the pocketbook?

A He always did.

Q When this friend came out, you met him at the elevator, and did Harry introduce you?

A I don't remember that.

Q Did you ask Harry who the friend was?

A No.

Q When you went to the restaurant, did you order something to eat?

A Yes.

Q Did Maria order something to eat?

A Yes, she did.

Q Did Harry and his friend ever come back?

A They came back sometime later while we were eating, they came down.

Q Had you already been served your food?

A I think we were. I am not sure but I think we were.

Q After they came back, did you ever go with them to make a phone call?

A No.

Q Did you ever walk with them to a phone booth?

A Not that I remember.

Q Did Harry's friend tell you that he had to make a phone call?

A He just went out. He didn't say why. He just went out.

Q Harry's friend went out?

A Yes, the two of them.

Q Harry went with them?

A Yes.

Q Did you go with them?

A No.

Q Did you ask him where they were going?

A No.

Q Did you ask him how long they would be?

A I told him if he wasn't back like in five minutes, I was going to leave, because I had things to do.

Q You told him you were going to leave?

A Yes, after I finish eating.

Q Other than the pocketbook which you say Harry was carrying, was Harry carrying anything else with him?

A Not that I can remember.

Q Was he carrying any deliveries for a place in Brooklyn?

A No, they were at the store, the shoes he had to deliver at Brooklyn.

Q He left them at the store in New Jersey?

A Because when I would finish making the shoes from the factory, I would leave them in the back of the store because I have an alarm system there and I leave the factory. When the product is finished, I store in the store as much as I can there.

Q You didn't tell him to bring them with him?

A No.

Q You never went to a phone booth with Harry?

A Not that I remember.

Q Did Harry tell you he was going to make a phone call?

A I don't remember that.

Q But they left the restaurant and you told them to be back in five minutes?

A Yes, to be back before I finish eating because after I would finish, I would have to take care of my business.

Q Did they come back before you were finished eating?

A Yes, they did.

Q Within five minutes?

A I don't know exactly. I wasn't looking at a watch or anything.

Q Then what did you do?

A Then I gave Maria the ticket for the parking lot, told her how many feet, I think, to get of the leather. Whatever she had to do, I told her what to get, and take the car, I was going to go to my father's office and to the lumber yard.

Q Where did you tell her this?

A In the diner.

Q Was that before or after Harry came back?

A I don't remember.

Q From the diner, did you walk outside with Harry?

A Yes.

Q And with his friend?

A Yes.

Q Was Maria with you at that time?

A No. She was on her way toward the car.

Q She was gone already?

A We went this way and she went to get the car.

Q Did you walk out of the luncheonette together?

A I think we did.

Q When you met Harry and his friend again, did you say anything to him?

A I told him I was going to go to the lumber yard on 42nd Street between Tenth and Eleventh Avenue, System Lumber Yard.

Q That is on the west side?

A Yes.

Q Had you asked Maria to give you a lift back there?

A No.

Q Where was it that Maria was going?

A To Spring Street to get leather at Minerva Leather Company.

Q Where is Spring Street?

A Right here in downtown New York.

Q So you told them you were going to the lumber company?

A Yes.

Q Where in fact did you go?

A We stopped at 43rd and Eleventh Avenue because Mr. Shapiro and his friend were supposed to meet somebody there, or so they told me, And I told them that I was going to proceed and go to the lumber yard or to my father's office. They told me to wait five minutes, Harry told me, that he would be out in five minutes. I waited for three, five minutes outside, and since he didn't come, I took a taxi and went to my father's office and to the lumber yard.

Q Did you want Harry to go with you to your father's office to pick up money?

A I wouldn't mind if he came.

Q Did you ask him to?

A Not that I remember. I don't remember.

Q Had you asked Harry to go to the leather factory or the lumber factory with you?

A I don't remember if I did or not. I can't remember.

Q But you got out of the cab?

A Yes.

Q In front of the Market Diner?

A Not in front of the diner, on the corner. The

diner would be, like, between the block there.

Q Did you ask Harry what he was going to do inside the diner?

A No.

THE COURT: Can you estimate how much longer this is going on?

MR. BUCHWALD: I would think 20 minutes,

THE COURT: All right.

Q Did you ask his friend what he was going to do in the diner?

A No.

Q Then did they come out of the diner?

A I left. I don't know what happened.

Q Did you go into the diner to look for Harry?

A No.

Q Did you go into the diner to look for his friend?

A No.

Q What did you do?

A I took a taxi and I directed myself to my father's office on 790 Ninth Avenue, between 52nd and 53rd Street.

Q While you were on the corner, did you see anyone?

A The usual people, taxicabs, cars passing by, trucks.

Q What were you doing while you were on the corner?

A I was waiting for Harry.

Q Did you look across the street and see a car parked in the gas station?

A I did not.

Q Were you pacing back and forth?

A Yes, I did.

Q Then you went out and you got a cab?

A Yes.

Q Without first going into the Market Diner?

A Yes.

Q Then where did you go?

A I went to my father's office.

Q What time of day was this?

A In the afternoon.

Q Was he there?

A My father?

Q Yes.

A Yes.

Q You spoke with him?

A Yes.

Q How long were you there?

A For about five, ten minutes.

Q Eventually did you get back to New Jersey?

A Yes, I did.

Q How did you get back to New Jersey?

A I took a bus.

Q From where?

A From the Port Authority.

Q Had you asked Maria to meet you anyplace, in the car

A No. I told her, when she would finish buying the leather, to drop it off at the factory and then to meet me by the store.

Q In your car?

A Yes, she had my car.

Q The next day you were arrested, were you not?

A Yes, I was.

Q Do you remember Agent Hall, the short fellow who arrested you, is he one of the fellows who arrested you?

A Yes.

Q You told Agent Hall that you hadn't been in New York City the day before; isn't that correct?

A Right.

Q You drove past the Market Diner and you said you had never been at the Market Diner before; isn't that correct?

A I don't remember the name of the diner until they mentioned it to me.

Q Did you drive past a diner and they pointed it out to you and they said that's where we saw you?

A Yes.

Q And you told them you never were there before?

A I don't remember what I told them.

Q You don't remember?

A I don't remember.

Q Do you remember telling them that you were never involved in narcotics?

A Yes.

Q Do you remember saying that you were never involved in narcotics?

MR. STONE: Objection.

THE COURT: I will permit it.

MR. STONE: He should ask whether he made the statement or not first.

THE COURT: All right.

Q Did you ever tell them that you had never had narcotics?

A I don't remember.

Q Do you remember, on the day following your arrest, coming down to this courthouse?

A Yes, I think I came down here.

Q Do you remember speaking to an assistant United States attorney?

A Yes.

Q Do you remember telling the Assistant United States Attorney that the last time you had seen Harry Shapiro was that preceeding Monday, July 9?

A I don't remember but I probably did.

Q Do you remember telling him that you had last seen him at the shoe store?

A I can't remember but maybe I did.

Q And that wasn't true, was it?

A No.

Q It wasn't true that you had not been in New York City on that day, was it?

A No, it wasn't.

Q It wasn't true that you hadn't been at that corner by the diner, was it?

MR. STONE: Objection, your Honor.

THE COURT: Yes. I think you ought to ask him did he say that he hadn't been there. It is my understanding that he did say that, but I can ask him.

Mr. Mayet, did you tell the agent or the assistant United States attorney that you had never been at that corner on Eleventh Avenue and 43rd Street?

THE WITNESS: Maybe I did but I don't remember.

MR. STONE: We have two statements, one to the agent, supposedly the day before, and one to the United States

Attorney. I think his question should be specific.

THE COURT: I asked him whether he did to either, to anybody, and he says he does not remember.

MR. STONE: All right.

Q Is it your testimony, Mr. Mayet, that when you were arrested, the agents told you that they were going to send you back to Cuba?

A Yes, they did.

Q Which agent told you that?

A I think it was the short fellow that testified, Hall.

Q Agent Hall told you that you were going to be sent back to Cuba?

A Right.

Q What did you say when he said that?

A I didn't answer him.

Q Did you tell the magistrate that when you were brought before the magistrate?

A No, I told my lawyer.

Q Did you tell your lawyer that day?

A No. Later I told Mr. Stone.

Q When you were brought before the magistrate, did you have a lawyer?

A Yes, I did.

Q Who was that lawyer?

A I think he is a friend of my father. His last name is Covitz but I can't remember, really, his name.

Q Did you tell the lawyer that the agents had said that you were going to be sent back to Cuba?

A Right.

MR. STONE: Objection, it is irrelevant.

THE COURT: I will permit it.

Q You said you had an argument with Harry Shapiro on July 9?

A Yes.

Q Where did that argument take place?

A In the car while driving to New York.

Q In the car on the way into New York?

A Yes.

Q What did you say to him on that occasion?

A He told me that he wanted a higher percentage, and I told him that I wanted him to be more on time and put more time into the selling.

Q When you were in the office of the Assistant United States Attorney the day after you were arrested, were you advised of your constitutional rights?

A Yes, I was.

MR. STONE: I will gladly accept this statement in

evidence. This is a defendant's statement. I have no objection if they offer it.

THE COURT: Do you object to this question?

MR. STONE: No, but it would save time.

THE COURT: Let's go on.

I must say, though, it is a whole lot longer than any five minutes and I think this has to be stopped. Let's go on and finish.

Q Did the Assistant United States Attorney advise you of your rights? Did he ask you if you understood?

A Yes.

Q Did you tell him you understood?

A Yes.

Q After that, you still told him you had not been in New York that day?

A I was "coactionated" (sic), like. When they arrested me, they handcuffed me and they pushed me around and --

Q That is why you told them that you hadn't been in New York; is that correct?

A That is right.

Q You never saw Maria Aguilar with that pocketbook?

A Not that I remember, no. I never had.

Q Have you ever seen a cigarette case like this?

A I don't smoke.

Q Have you ever seen a bracelet like this?

A I have, but in a million places.

Q Have you ever seen that bracelet on Harry Shapiro?

A Not that I remember.

MR. BUCHWALD: No further questions.

MR. STONE: I offer Defendant's Exhibit C, Mr. Mayet's statement, in evidence.

MR. BUCHWALD: No objection, your Honor.

(Defendant Mayet's Exhibit C received in evidence.)

MR. STONE: I have no further questions.

THE COURT: Mr. Willis?

MR. WILLIS: If I may look at that. I don't believe that would have anything that would cause a Bruton problem.

I have no questions.

THE COURT: Did you take a look at it?

MR. WILLIS: Yes. I am sure it doesn't have any Bruton problem.

THE COURT: Anything else, Mr. Buchwald?

MR. BUCHWALD: No further questions.

THE COURT: Thank you, Mr. Mayet, you may step down.

Madame Forelady and ladies and gentlemen of the jury, let's take a recess at this point. I hope everyone will be patient, I would like to finish the case this afternoon.

(The jury left the courtroom.)

(Recess.)

(In open court; jury present.)

THE COURT: Mr. Stone.

MR. STONE: I call either Mr. Avila or Mr. Gonzales, the first one there.

C A R L O S A V I L A , called as a witness on behalf of Defendant Mayet, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STONE:

Q How old are you?

A Twenty-eight years old.

Q Have you ever been convicted of a crime?

A No.

Q What business or occupation are you in?

A Manager of a used-car lot.

Q How long have you worked there?

A This is a new job. I just started six months ago.

Q Before that, were you gainfully employed?

A I was a lithographer. A can manufacturing company.

Q Did you ever serve in the armed forces of the United States?

A Three years.

Q What kind of discharge did you receive?

A Honorable discharge.

MR. BUCHWALD: Objection.

THE COURT: I will permit it.

Q Do you know the defendant Mayet?

A Yes. We went to school together.

Q Where did you go to school?

A Memorial High School, West New York.

Q How long have you known him?

A I came to this country in '61; approximately '62 I met him, 1962.

Q Do you know other people that know him?

A Yes.

Q Do you see him and other people on a social basis regularly?

A Yes, I do.

Q Do you have occasion to discuss Mr. Mayet with the other people in your social circle?

A To discuss him?

Q Yes.

A Yes.

Q Based on the discussions that you have with these other people, what is Mr. Mayet's reputation in the community for truth and veracity?

A As far as I am concerned, he is a good guy all the

way around.

THE COURT: What is his reputation for truth and veracity, is it good, bad or indifferent?

THE WITNESS: Good.

Q Have you discussed with these other people the fact that he had been arrested, the fact that he had been arrested for narcotics?

A Yes.

Q You had discussed his violating the Federal narcotics laws?

A Yes.

Q Has his reputation changed when you told them of that arrest?

A No.

Q Did you ever have occasion to discuss the fact that Mr. Mayet told you that he also sniffed on some occasions?

A Yes.

Q Did that affect his reputation in the community for truth and veracity?

A No, not at all. He has been having trouble with his wife.

MR. STONE: No further questions.

CROSS-EXAMINATION

BY MR. BUCHWALD:

Q Do you know anything about the facts of this case on trial now?

A Yes, I do.

Q Have you ever met Susan Marcus?

A No, I have not.

Q Have you ever met Michael Lorber?

A No, I have not.

Q Have you ever met Bruce Roth?

A No.

Q Have you ever met Gregory Korniloff?

A Repeat that name.

Q Gregory Korniloff.

A No.

Q Have you ever met Jeffrey Hall?

A No.

Q Have you ever seen Mr. Mayet using cocaine?

A No, not personally.

Q Have you discussed with him his use of cocaine?

A Yes, occasionally. The subject has come up, and I am not the one to judge anybody. I don't do it personally, but he has a baby and he has been having trouble with his wife and this, I believe, is the tendency that he has to use that stuff.

MR. BUCHWALD: No further questions.

THE COURT: Anything else?

MR. STONE: Nothing else.

THE COURT: Thank you, you may be excused.

(Witness excused.)

THE COURT: Go ahead.

MR. STONE: Mr. Gonzales, please.

J O S E M I C H A E L G O N Z A L E S , called as a witness on behalf of Defendant Mayet, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STONE:

Q How old are you?

A Twenty-five.

Q What is your business or occupation?

A Quality control inspector for Cramco Steel.

Q How long have you worked there?

A Four years.

Q Have you ever been convicted of a crime?

A No.

Q Do you know Mr. Mayet?

A Yes.

Q How long have you known him?

A Eight, nine years.

Q How did you meet him?

A Playing, basically.

Q Do you have occasion to see him on many occasions, socially or business-wise?

A Yes, I do.

Q How many occasions have you had to see him, say, in the last year and a half?

A Thirty, 40 times.

Q Have you discussed him with other people that know him?

A Yes.

Q These are contemporaries of yours and contempararies of his?

A Right.

Q On the basis of your discussions with these people, what is Mr. Mayet's reputation in the community for truth and veracity?

A It is maintained pretty high.

Q Do you know why he is on trial today?

A Yes, sir.

Q Have you had occasion to discuss the fact that he is facing a Federal charge, with some of these other people?

A Yes, sir.

Q Have they changed their opinion of him because of this pending charge?

A No, sir.

MR. STONE: No further questions.

THE COURT: All right, Mr. Buchwald.

CROSS-EXAMINATION

BY MR. BUCHWALD:

Q Have you discussed with other people in the community the fact that Mr. Mayet uses cocaine?

A Yes, sir.

Q Are you familiar with the facts in this case?

A Partly, yes.

Q Have you ever met Susan Marcus?

A No.

Q Or Michael Lorber?

A No.

Q Gregory Korniloff?

A No.

Q Jeffrey Hall?

A No.

Q Did you discuss with people in the community the fact that Mr. Mayet did not tell the truth to agents of the Drug Enforcement Administration when he was first arrested?

MR. STONE: Objection, your Honor, that is not the testimony.

THE COURT: I can't remember it. I thought

Mr. Mayet said that some of the statements he made to the agents were not true.

MR. STONE: The United States Attorney, the next day, not the agents.

THE COURT: All right. I can't remember it, so I will have to sustain the objection. That is, as to form.

Q Did you discuss with people in the community the fact that Mr. Mayet did not tell the truth to the United States Attorney after he was arrested?

A No, sir.

Q Do you consider yourself a friend of Mr. Mayet?

A Yes, sir.

MR. BUCHWALD: No further questions.

MR. STONE: No redirect.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Next.

MR. STONE: I call Mr. Mayet, Sr.

THE COURT: We need an interpreter.

(Melvyn Quinones, the interpreter, was duly sworn.)

C A N D I D O M A Y E T , S R . , called as a witness on behalf of Defendant Mayet, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STONE:

Q Mr. Mayet, are you the father of Candido Mayet, Jr.?

A Yes, I am.

Q How long have you been in this country?

A Since October 1962, 11 years.

Q Your son, does he now live with you?

A Yes.

Q Are you the owner of the Fiesta Shoe Company and the Puma Shoe Store?

A What is the name?

Q Fiesta Shoe Company and the Puma Shoe Store.

A Yes.

Q Does your son work for you?

A Yes. He works with me.

Q How many years has he worked for you?

A Three years.

Q Do you have any other children?

A One daughter.

Q What kind of work does she do?

A She is a student.

Q How old is she?

A Twenty. Excuse me, 21.

Q Is your wife employed?

A Yes. She has been working in the same place for

11 years.

Q Do you also run a small accounting business in New York City?

A Yes.

Q Do you handle the money for the Puma Shoe Store and the Fiesta Shoe Factory?

A Yes.

Q Do you own an automobile?

A Yes.

Q What kind of an automobile?

A I have two; one is a Dodge -- both are Dodges.

Q What year and what kind of car?

A One 1969 sedan, two doors and the other is a station wagon of 1968.

Q Does your son use one of those cars on occasion?

A Yes, the station wagon is used for the factory.

Q How much money did you invest in the factory and the shoe store?

A We began with very little money, with used machines --

MR. BUCHWALD: Objection as to relevancy, your Honor.

THE COURT: The objection comes too late. He is answering the question now.

Go ahead.

A We invested approximately $2,000 in the factory,

and in the store, about $1,000 plus credits and plus some loans that I made.

Q Did your son ever give you any money to invest in the shoe factory or store?

A No, because he worked with me and the money, we would put that --

THE COURT: The answer is no; so we will strike the rest of it.

MR. STONE: All right.

Q Do you remember the day your son was arrested?

A Yes.

Q The day before he was arrested, did he come to your office and ask you for any money?

A Yes.

Q Do you remember what time of the day this was?

A It was in the afternoon.

Q Did he tell you what the money was for?

A He wanted to buy some wood for the shoes.

Q Do you use wood to manufacture these shoes?

A Yes, one kind of shoe.

Q Would you described to the jury what part of the shoe is wood; and is that a similar type shoe that you make?

A All of the platform and this part here are made of wood. It's a special kind of wood.

Q Do you know where that wood comes from in New York, what lumber yard?

A I have been there once. It's around 42nd Street and Eleventh Avenue. It is he who always buys it.

MR. STONE: No further questions of this witness.

THE COURT: Mr. Willis?

WILLIS: I have no questions.

THE COURT: Mr. Buchwald?

CROSS-EXAMINATION

BY MR. BUCHWALD:

Q Mr. Mayet, do you know what kind of wood is in that shoe?

A It's a kind of wood -- you buy two different kinds of wood and these two different kinds are joined.

Q Mr. Mayet, have you ever discussed this case with Mr. Willis?

A Who is Mr. Willis?

MR. WILLIS: That answers the question, Judge.

MR. BUCHWALD: Would you stand, Mr. Willis?

MR. WILLIS: Certainly.

MR. STONE: I will introduce him after the case, your Honor.

THE WITNESS: No.

Q Have you discussed the facts of this case with your

son?

A Yes.

Q Have you discussed with your son where he said he was on the day before he was arrested?

A I knew where he was. He was working.

Q Have you discussed the facts of this case with Mr. Stone?

A Yes.

Q Have you discussed with your son the facts concerning his arrest?

A Yes.

Q Did you appear in court and sign a deed in connection with his appearance before the magistrate?

A You mean when he was arrested?

Q Yes.

A Yes.

Q Did you talk with your son at that time?

A Not in court.

Q Did you talk to him right after that?

A Yes, at home, because we live together.

Q That day?

A When he was set free or released.

Q Did he tell you at that time that he had been roughed up by the people who arrested him?

MR. STONE: Objection, your Honor.

THE COURT: I will permit it.

MR. STONE: There was no testimony that he was roughed up.

THE COURT: I thought that Mr. Mayet said that they pushed him around, shoved him around.

MR. STONE: That is an interpretation of the word "roughed up." Just because you are pushed around doesn't mean you are roughed up.

THE COURT: What did he say, according to you, that they did to him?

MR. STONE: That he was pushed and shoved. I think that is it.

THE COURT: All right.

I will have to ask you to use that expression, because I can't remember.

Q Mr. Mayet, did your son tell you that he had been pushed and shoved by the agents who arrested him?

A Yes.

Q Did you understand what Mr. Stone said when he spoke in English to the judge?

A No.

Q Did your son tell you that the agents told him he would be sent back to Cuba?

A Yes.

Q Did you tell the magistrate that?

A No.

Q When you signed the bond, was that in the magistrate's office?

A It was in a different office from the one to which we went the first day. I think it was 110, but I am not sure.

Q When you spoke to Mr. Stone about this case, did you speak with him alone?

MR. STONE: Could we have a time and place?

THE COURT: You mean at any time?

MR. BUCHWALD: At any time.

A I have spoken to him on several occasions.

Q Have you ever spoken with him alone?

A No.

MR. BUCHWALD: No further questions.

MR. STONE: No redirect.

THE COURT: Thank you, Mr. Mayet.

(Witness excused.)

MR. STONE: The defendant Mayet rests, your Honor.

THE COURT: All right.

Mr. Willis?

MR. WILLIS: Your Honor, the defendant Aguilar rests, and to speed things along, I will just renew all the motions --

THE COURT: I will give you a chance.

Any rebuttal?

MR. BUCHWALD: Yes, your Honor.

THE COURT: How long will it be?

MR. BUCHWALD: I think quite short.

THE COURT: We better do that first thing in the morning.

Madame Foreman and ladies and gentlemen of the jury, I am sorry we had to sit later than we ordinarily do. You understand that I am anxious to complete the case. You have just heard the Government will have a short rebuttal and we will do that the first thing in the morning. Then counsel will make their cross-arguments and then I will give you my instructions and submit the case to you for your decision.

We will meet again here at 9:30 tomorrow morning, until which time, you are excused, keeping in mind my instructions not to discuss the case among yourselves or with anybody else.

Thank you very much. You may retire.

(The jury left the courtroom.)

THE COURT: Mr. Willis, Mr. Stone, in what order do you gentlemen want to sum up?

MR. WILLIS: I think I will be summing up first

and Mr. Stone will be summing up second.

THE COURT: All right. I take it, Mr. Stone, that is agreeable with you?

MR. STONE: Fine.

THE COURT: It is actually the way I would run it anyway.

About how much time would you like, Mr. Willis?

MR. WILLIS: Since it's going to be in the morning rather than night, I would ask between 30 to 45 minutes, your Honor. It may run less, but in that area.

THE COURT: Mr. Stone?

MR. STONE: I would say in that area also, perhaps less.

THE COURT: Mr. Buchwald?

MR. BUCHWALD: I would think 45 minutes, your Honor.

THE COURT: All right. Let's meet, then, tomorrow at 9:30 and the chances are that by the time I have finished my instructions, it will be time to send the jury to lunch; and probably I will send them to lunch with the marshals, in a body, as soon as I have completed my instructions, depending, of course, what time it is.

You may be excused.

- - -

(Adjourned to December 11, 1973, at 9:30 a.m.)

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UNITED STATES OF AMERICA,

vs. 73 CR. 702

CANDIDO MAYET &
MARIE AGUILAR a/k/a MARIA

New York, December 11, 1973
9:30 a.m.

(Trial resumed.)

(In open court; jury not present.)

THE COURT: Before I forget, Mr. Willis, do you want me to charge on failure to testify?

MR. WILLIS: Yes, I do, your Honor.

THE COURT: I always ask the question because occasionally some lawyers for the defendants prefer not to have it.

MR. WILLIS: I prefer it, Judge. Thank you for asking.

THE COURT: All right.

We have this problem this morning: Juror No. 10, Mrs. Pressberger, tells the clerk that there has been a deach in her family since our session yesterday and she says she is willing to sit this morning and this afternoon if she had to but that she could not sit tomorrow. I am wondering, under the circumstances, I want to ask counsel, of course, I am wondering under the circumstances if perhaps we shouldn't

excuse her and put in an alternate.

MR. STONE: We would like to hear the Government's position and maybe we can agree.

THE COURT: Mr. Buchwald, what do you say?

MR. BUCHWALD: I don't know how close the person who died is to the juror and she didn't tell the clerk.

Your Honor, we would be willing to go along either way.

THE COURT: You will do whatever we want to do?

MR. STONE: Whatever the Court thinks is fair. If you are going to finish charging at 12, 12:30 and then there is lunch, you limit them to about three hours' deliberation with pressure which could affect either side and then you have a problem of a mistrial which I don't think any of us want. I don't think you would declare one in a three-hour deliberation.

THE COURT: I wouldn't want to, but I would imagine that religious reasons having to do with attendance at services for the departed would require that I excuse a juror who has a death in the family.

MR. STONE: The fair thing -- I will be glad to excuse her. That is not a problem. In fairness to her you might inquire either in chambers by yourself if she would be affected into pressuring her decision. Would she want to be

released; if she didn't would she want to come back tomorrow if they aren't finished; could she come back?

THE COURT: She can't come back tomorrow. That is what she told the clerk definitely. I strongly feel that neither side ought to have a juror who is, for all we know, distracted by the death and apprehensive that she won't finish by tomorrow and run the risk -- we never know how long a jury will deliberate. It just seems since we have two alternates, it just seems to me to be rather foolish.

MR. WILLIS: It is a shame it has to be Juror No. 10 because I know she is on our side.

MR. STONE: We agree on that, your Honor. Therefore we should make sure that the first alternate is also on our side.

I think it is your decision, really.

THE COURT: If counsel opposed it I would talk to the juror some more, but I think under the circumstances we ought to excuse her.

MR. STONE: Unless you want to ask her whether that would affect her at all and whether she wants to be excused. There is always a problem of a juror being excused and another juror saying why is she excused, she was here this morning.

THE COURT: If I excuse her I will state in open court to the jury why I am excusing her, because there is a

death in the family.

MR. STONE: I would ask her if she wants to be excused. Let her know that it could go later this afternoon and possibly tomorrow and would she like to be excused. Some jurors say no, that they would like to stay.

THE COURT: So that we have more facts, I think I will speak to her in the robing room for a moment and then I will tell you what happens.

Mr. Clerk, bring in the juror.

MR. STONE: I am content to let you make the decision based on what you told us.

THE COURT: Let me explore it with her first.

MR. WILLIS: Your Honor, may I be excused to go to the men's room?

THE COURT: Yes, certainly.

(Pause.)

MR. BUCHWALD: Let the record reflect that prior to the taking of any testimony yesterday the following 3500 material was turned over with respect to Agent Gregory Korniloff: Item 3507-A, consisting of his grand jury testimony of July 18, 1973 consisting of four pages. Item 3507-B, a one-page sketch. Item 3507-C, a BND-6 dated July 10, 1973 entitled "Seizure of Exhibit 1," consisting of three pages. Item 3507-D, the laboratory evidence receipt consisting of

one page dated July 11, 1973. Item 3507-E, a BND-6 dated July 11, 1973 entitled "Arrest of Mayet," consisting of two pages. Item 3507-F, a BND-6 dated July 19, 1973 entitled "Identification of Aguilar," consisting of two pages.

Item 3507-G, a BND-6 dated August 7, 1973, entitled "Arrest of Aguilar." That consists of one page. Item 3507-H, a report of non-drug property received dated August 14, 1973, consisting of one page.

(Pause.)

THE COURT: I have talked to Juror No. 10, Miss Pressberger. She says that it is her aunt who died and her aunt lived next door to her, and she said that she would very much prefer to be excused. I think under the circumstances it is the wise thing to excuse her.

Jim, I also said that I would excuse her for tomorrow. Does she have to come back on Friday?

THE CLERK: No, they have served two weeks already.

THE COURT: All right.

Does she get any kind of a card?

THE CLERK: If she goes to Room 109.

THE COURT: All right.

Let's take the time, since we are starting late, to run over the Government's requests to charge.

When I say I will give a charge, I usually mean

that I give it in substance, almost never in the words of the request.

1, yes. 2, yes. 3, yes. 4, yes. 5, yes. 6, yes. 7, yes. 8, as modified. I think that means shortened.

9, yes. 10, yes. 11, yes. 12, yes. 13, yes. 14, the first paragraph as modified; the second paragraph, no. I give a charge that if a witness is equally available to both sides, failure to produce such a witness should not give rise to any inference for or against any party, the Government or a defendant.

MR. STONE: I wonder in this case if that is called for. I don't know of any situation where anybody is claimed as a missing witness.

THE COURT: All right.

MR. WILLIS: I join in that, your Honor. That just adds more to the burden of the jury listening to the entire charge and understanding it.

MR. STONE: I certainly have no intention of summing up concerning a witness that has not been called.

THE COURT: All right.

15, yes, as modified and shortened, and the paragraph on the facts, no. I don't usually charge on facts. That is the paragraph that the Government contends that after he was arrested he stated that he was not in New York.

As to that detail, counsel can argue that, but I have to point out that the Government contends that Mayet, after he was arrested, made certain statements which the Government claims to have been false. But I don't go into the statements and of course I have to explain that that evidence is admissible only as against Mr. Mayet and not as against Miss Aguilar.

MR. STONE: Number 16 I think should be withdrawn.

THE COURT: Number 16 is no. I never give it.

Number 17, I am not sure that that is appropriate. Anyway, it is linked with facts as to which I seldom charge.

Number 17, no. Number 17, yes.

MR. STONE: Would you also add Lorber, Roth and Marcus as accomplices, because I certainly think as a matter of law that they would be determined to be accomplices.

THE COURT: I had thought that the proper description of Lorber and Roth were informants.

MR. STONE: Then there would be a different charge in there as to informants.

THE COURT: Yes.

MR. STONE: I don't know where you want to put Marcus. She certainly is one or the other. She is not a disinterested witness under either the law or the facts.

MR. BUCHWALD: She is certainly not an accomplice

as to the crimes charged which is conspiracy to distribute cocaine and sale of cocaine.

MR. STONE: If she is a buyer of cocaine, under the Government's theory, she is part of the conspiracy.

MR. WILLIS: Furthermore, the conspircy dates, the start was in May. That means that Susan Marcus would fall into that period that the Government charges an active conspiracy was taking place.

THE COURT: I am convinced that Shapiro -- of course, he is a defendant.

MR. STONE: Correct.

THE COURT: And Kelly, if he were to testify -- I think what I had better say is that Shapiro and Kelly, if Kelly testifies, and perhaps others, and leave it to the jury as to whether they are accomplices or not. I don't know if an accomplice is a matter of law here.

MR. STONE: If you say "and others," in a short trial where there is the possibility of only three others, some jurors would feel they are not accomplices. An accomplice's testimony should be scrutinizedwith care. The standard charge is that informers are entitled to the same charge as an accomplice's. They have to be one or the other.

THE COURT: Who do the defendants say are accomplices?

MR. STONE: I would say that Shapiro, as of this point.

THE COURT: Yes, definitely.

MR. STONE: Marcus as of this point is an accomplice and Lorber and Roth -- Roth would be an informer and Lorber would be both an accomplice and an informer.

THE COURT: We have Shapiro, Kelly if he testifies, and Marcus.

MR. STONE: That is correct.

THE COURT: Mr. Buchwald, is Marcus an accomplice?

MR. BUCHWALD: Not in our judgment. This is a charge of a conspiracy to distribute and sell cocaine. The only evidence is that she herself purchased a quarter ounce of cocaine.

THE COURT: Shapiro, Kelly and perhaps Marcus.

MR. STONE: All right.

THE COURT: It can't do any harm.

Who else?

MR. STONE: Roth and Lorber are either informants or accomplices.

THE COURT: They are informers.

MR. STONE: Will you give a charge as to informers?

THE COURT: I think the Government has requested an informer charge, haven't you, Mr. Buchwald?

MR. BUCHWALD: Yes, we have, your Honor.

MR. STONE: I ask their names be mentioned.

THE COURT: All right.

So 18 is yes, and I will mention Shapiro, Kelly and perhaps Marcus, if Kelly testifies.

19, yes. 20, yes. 21, yes. 22, no. 23, those are standard instructions which I will give.

MR. BUCHWALD: Might I request, and I don't believe I included it in the standard instructions, but I would request that your Honor add an instruction as to character evidence.

MR. STONE: I was going to ask that.

THE COURT: Character witnesses?

MR. STONE: Yes, I think that is a standard charge.

THE COURT: Yes, I will give that charge.

MR. STONE: There are a few exceptions I would like to make.

On Request No. 2 which you say you are going to grant in substance, one portion in the second paragraph, that they must determine the nature of the participation of any of the other named defendants in order to find these defendants innocent or guilty --

THE COURT: They may have to determine the nature of the participation of any of the other named defendants,

that's right, Shapiro and Kelly.

MR. STONE: I think that is an unfair burden in this case. Even if Kelly and Shapiro are guilty that doesn't necessarily mean that Mayet and Aguilar are.

THE COURT: Of course not. I am instructing them that, in other words, Kelly and Shapiro, under my instructions, could have formed a conspiracy and the question is, did either of these defendants on trial join it. I will make that perfectly clear to them.

MR. STONE: Request No. 3, I don't think it is necessary to go into why there was a comprehensive drug abuse law which could turn the detrimental effect and health and welfare of our people.

THE COURT: I always do it.

MR. STONE: I would except to it.

MR. WILLIS: I join in that.

MR. STONE: I don't see why in a conspiracy case to know why Congress has made certain statutes.

THE COURT: I may have plagiarized from somebody else but I have been using it very long.

MR. STONE: The law changes and I read an article where lawyers are supposed to promote the change.

The other exception is Request No. 5, aiding and abetting. I would ask you to at least modify it. It is not

quite the Government's request under Pinkerton. However, I feel that if they have a conspiracy charge that it would be duplication and unfair to the defendant to also have an aiding and abetting charge. I think that is too great a burden for a defendant in a conspiracy case. Either they are guilty of a conspiracy or they are not.

THE COURT: If they are not guilty of the conspiracy, couldn't they still be guilty of aiding and abetting under Count 2? I'm afraid so.

MR. STONE: If they are not guilty on Count 2, are they guilty of the conspiracy? The Government wants it both ways and they always get it both ways. We are getting too complicated a charge. They ask for conspiracy charges and aiding and abetting charges. I think these are all utilized to confuse the jury and add an unfair burden upon a defendant.

I think the Government should have one charge and one charge only. It is either a conspiracy, and they should be able to prove the conspiracy, or they are aiding and abetting. They shouldn't have it both ways in a simple case where the substantive count refers to one act which is the sole basis of the conspiracy.

THE COURT: It is not the sole basis of the conspiracy.

MR. STONE: Well, 80 or 90 percent of the conspiracy

is also the substantive act and they want both. In this case it is unfair.

THE COURT: Would it help if I shortened the aiding and abetting charge?

MR. STONE: A shortening would help, but I would still like my exception.

THE COURT: Of course you can have your exception.

MR. WILLIS: I join in that exception.

MR. STONE: If you put either the conspiracy or aiding and abetting and they must have a purpose and have a stake in the success of the venture.

THE COURT: What is it you want, Mr. Stone?

MR. STONE: That they know the purpose of the conspiracy and they have a stake in the success of the venture.

THE COURT: That is joining the conspiracy. That is not aiding and abetting.

MR. STONE: Even in the aiding and abetting they must have a stake in its success.

THE COURT: Then I may as well give it just the way the Government has got it.

MR. STONE: They don't come in with the statement of success.

THE COURT: All right.

MR. STONE: They have about 15 pages of aiding and

abetting and conspiracy. That is a complicated charge.

THE COURT: What is it you want me to say about aiding and abetting?

MR. WILLIS: Nothing, your Honor.

THE COURT: I am going to give them the statute and I'm going to say it is not necessary for the Government to show that a defendant physically committed the crime himself or herself. It then provides that a person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself or herself. I am willing to stop there.

MR. STONE: If you're going to put that in, you also say the person should know the purpose of the act and should have a stake in its success.

MR. WILLIS: I join in that application, your Honor.

THE COURT: All right. I'll have to redo this one. We will have to take a recess.

MR. STONE: There is one thing I assumed you would give, and that is if you find that a person has made a material misstatement they have the right to disregard --

THE COURT: You mean false statement?

MR. STONE: Yes.

THE COURT: Yes, I give that.

Let's get the jury in.

qgs15

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen of the jury.

Madam Foreman and ladies and gentlemen of the jury, Juror No. 10, Miss Pressberger, has most unfortunately sustained a death in her family. Under the circumstances I am going to excuse Miss Pressberger.

Mr. Clerk, I believe Miss Pressberger is excused for the term? She should go to Room 109 where you can get a certificate of your service, I believe.

You may retire, Miss Pressberger. Thank you very much for your service.

I believe Alternate Juror No. 1 is Miss Moultrie.

Miss Moultrie, will you take a seat in No. 10's place, please, ma'am.

Miss Ettinger, would you be good enough to move down into the alternate Juror No. 1 spot.

Members of the jury, again, your punctuality this morning has not gone unnoticed. I am perfectly aware that at 9:30, our appointed meeting time, you were all here. We are deeply grateful. Again, unfortunately, the investigation of Mrs. Pressberger's situation and other matters have prevented our starting on time. I hope you will understand.

All right, Mr. Buchwald.

MR. BUCHWALD: The Government calls Mr. Robert Kelly.

R O B E R T K E L L Y , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Sir, are you the Robert Kelly named in the indictment in this case?

A Yes, I am.

Q Have you previously entered a plea in the case?

A Yes, I have.

Q What plea was that?

A Guilty.

Q Have you been sentenced yet?

A No, I will be sentenced on January 11.

Q 1974?

A Yes.

Q I direct your attention to the evening of July 9, 1973. Did you have a telephone conversation with Candy Mayet on that evening?

A Yes, I did.

MR. STONE: What day is that?

MR. BUCHWALD: July 9, 1973.

Q What was the answer, sir?

A Yes, I did.

Q Who called who on that occasion?

A Candy called me at the apartment where I was staying at 5601 Boulevard East.

Q Where is that?

A In West New York, New Jersey.

Q What did he say to you and what did you say to him?

A He said it was an emergency, to meet him by his store as soon as I could get out of the house.

Q He told you that on the phone?

A Yes, he did.

Q What did you say?

A I said I would be there as soon as possible.

Q Did you go there?

A Yes, I did.

Q Which store was that?

A The shoe store, I think. I don't remember the name of the store, but I met him across the street from the shoe store. He was waiting across the street.

Q Do you remember the name Fiesta or Puma?

A Puma Shoes, it was.

Q And you met him by the shoe store?

A Yes, he was across the street. I drove up the block and met him across the street.

Q Then what happened when you met him at the shoe

store?

A He got into my car and he told me that Harry had been arrested in New York and that he told me that if Harry had called the apartment, not to get him involved, that he would take care of everything for Harry.

Q Not to get who involved?

A To get Candy himself involved in the case.

Q Candy told you this?

A Yes, he did.

Q What did he say about taking care of everything?

A He said that if Harry called he would help Harry out as much as he could.

Q What did he say about involving or not involving Mr. Mayet?

A Not to get -- tell Harry not to get him involved.

Q Would you look around the courtroom and tell me if you see Mr. Candy Mayet in the courtroom?

A Yes, I do.

Q Would you point to him, please?

A Sitting right there.

MR. STONE: I will stipulate he has identified the defendant.

MR. BUCHWALD: No further questions.

THE COURT: You have no questions, Mr. Willis?

MR. WILLIS: None.

CROSS-EXAMINATION

BY MR. STONE:

Q When did you decide to cooperate with the federal authorities?

A When the agents called me at my house, at the apartment, to come in to speak to them about the case.

Q And you were arrested then; is that correct?

A Yes.

Q And you gave them a statement?

A Yes, I did.

Q And you were questioned before the grand jury on July 18, 1973?

A Yes.

Q Did you make any statements concerning this meeting with Mr. Mayet before the grand jury?

A I don't recall right now.

Q I show you 3505-A for identification and I ask if you will please read that.

A Yes.

Q Is there anything in there about this meeting?

A No, there isn't.

Q When you pleaded guilty did you advise your attorney that you had testified in the grand jury against Harry

Shapiro?

A Yes, I did.

Q That is the extent of your cooperation; is that correct?

MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

Q Do you expect your attorney or the United States Attorney to advise the sentencing judge that you cooperated in this case at the time of your sentencing?

A I was told by the United States Attorney that they would speak to the judge as far as my cooperation was concerned.

MR. STONE: No further questions.

THE COURT: Anything else, Mr. Buchwald?

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Were you asked any questions at the grand jury about conversations that had happened on the night of July 9?

A No, I wasn't.

MR. BUCHWALD: No further questions, your Honor.

THE COURT: Mr. Stone?

MR. STONE: No questions.

THE COURT: Thank you, Mr. Kelly, you may be excused.

(Witness excused.)

THE COURT: Anything else, Mr. Buchwald?

MR. BUCHWALD: The Government re-calls Gregory Korniloff.

MR. WILLIS: Would your Honor instruct the jury that this evidence does not concern Mrs. Aguilar?

THE COURT: This evidence received from Mr. Kelly is only against Mr. Mayet and not against Miss Aguilar.

G R E G O R Y K O R N I L O F F , previously sworn, was recalled by the Government and testified further as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Korniloff, I direct your attention to July 11, 1973, the day following Candido Mayet's arrest. You had occasion that day to be present during the course of an interview of Mayet by Assistant United States Attorney Walter Phillips, did you not?

A Yes, sir.

Q During the course of that interview, did Mr. Mayet make any statements concerning a delivery to Brooklyn on Monday, July 9, the day Harry Shapiro was arrested?

MR. STONE: His statement is in evidence, your Honor, Mr. Mayet's statement.

(Question read.)

THE COURT: These are oral statements, I take it, you are calling for?

MR. BUCHWALD: That is correct. Mayet's Exhibit C, which is also 3501, is a summarization by the Assistant United States Attorney.

THE COURT: I will permit the question.

Q What was your answer?

A Yes, sir.

Q What did he say?

A Mr. Mayet stated that he had met Mr. Shapiro earlier that day, on the 9th, at his store in New Jersey. He had talked to Mr. Shapiro and after Mr. Shapiro had left the store Mr. Mayet proceeded to Brooklyn sometime after lunch to deliver some shoes.

Q Who did he say had gone to Brooklyn to deliver shoes?

A Mr. Mayet himself.

Q Not Harry Shapiro?

A No, sir.

MR. BUCHWALD: No further questions.

CROSS-EXAMINATION

BY MR. STONE:

Q Mr. Korniloff, you testified on direct examination,

did you not, that Mr. Mayet said that he didn't see Shapiro in the afternoon of January 9, or rather July 9?

A I believe so.

Q And that the only time he saw him was in the morning of July 9?

A Yes, sir.

Q And the morning to you is before 12 noon; is that right?

A Yes, sir.

Q And you remember that fairly well, don't you?

A Yes, sir.

Q I show you Defendant's Exhibit C in evidence and I ask if your signature appears there.

A Yes, sir.

Q And you witnessed this statement; is that correct?

A Yes, sir.

Q And before you witness anything you read it; isn't that correct?

A Yes, sir.

Q You wouldn't witness something you didn't read, would you?

A Yes, sir.

Q Would you read in evidence this paragraph.

A "1:30 p.m. he" -- I guess he is referring to

Shapiro -- "came into the store. I told him I had to deliver shoes to Brooklyn. He said" -- I can't make out the rest -- "he would be back later."

Q According to this statement Mr. Mayet saw Shapiro at 1:30?

A Yes, sir.

Q And you told us it was in the morning; is that correct?

A Yes, sir.

Q So your memory was wrong?

A As I remember it, sir.

Q But after reading the statement which you signed, you made a mistake; right?

A No, sir.

Q Is it 1:30 p.m. or in the morning?

A Morning, I recall.

Q But you signed this statement?

A Yes, sir.

Q And Mr. Phillips put 1:30?

A Yes, sir.

Q And you signed it after you read it?

A Yes, sir.

MR. STONE: No further questions.

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q It is your recollection that during that conversation Mr. Mayet said that it was he who had to go to Brooklyn to deliver shoes?

A Yes, sir.

MR. STONE: The statement speaks for itself.

THE COURT: Besides, it is a mere repetition. Isn't that what you already asked him? Didn't you ask him that on direct examination?

MR. BUCHWALD: Yes.

THE COURT: We won't have any more repetition. Let's go on.

MR. BUCHWALD: No further questions.

MR. STONE: No questions.

THE COURT: Thank you, Mr. Korniloff.

(Witness excused.)

MR. BUCHWALD: The Government has nothing further.

THE COURT: Mr. Willis?

MR. WILLIS: No, your Honor.

THE COURT: Mr. Stone?

MR. STONE: No, your Honor.

THE COURT: Madam Foreman, ladies and gentlemen of the jury, you remember that I pointed out to you that the fact that the Government has a burden of proof determines the

order in which arguments are made to the jury by counsel. Therefore, in the closing arguments, the defendants go first and the Government is allowed to make the last argument to the jury because the Government has the burden of proof.

Mr. Willis, will you address the jury.

MR. WILLIS: May I approach the bench on a motion, your Honor, briefly?

THE COURT: Yes.

(At the side bar.)

MR. STONE: We want to renew all the motions we made at the conclusion of the People's case.

THE COURT: Of course.

MR. WILLIS: I join in that motion.

THE COURT: I make the same rulings. They are denied. Thank you.

(In open court.)

MR. WILLIS: Judge Wyatt, Mr. United States Attorney, Mr. Stone, Madam Forelady, and jurors:

I can't help, before I go into my summation, but point out to you something that just occurred moments ago in this courtroom, and I think it will lend credence to what I have to say to you about this entire case concerning Maria Aguilar. The expression goes, "There are witnesses, there are witnesses, and there are witnesses." You just saw an agent

for the United States Government, trained by the Government of the United States in his profession, narcotics, working with the United States Attorney on this particular case, arresting the defendants in this case, interviewing the defendants in this case, and you just saw my colleague, Mr. Stone, and so aptly puts it to the witness, when he came into the courtroom trained, a professional man, and he got up on the witness box and he said to you, "My memory of July 9, my memory tells me to tell you that this occurred in the morning."

How many times did Mr. Korniloff testify from his memory? When I asked him specific questions concerning Maria Aguilar, that is. He was very sharp and he said on July this date and July that date, I remember this. I am a narcotics agent. Very professional, well dressed, conducts himself respectfully in the courtroom. But when Mr. Stone showed him the written document, the document says 1:30 in the afternoon and that is what has been going on here in this courtroom. People have been testifying from their memories.

Let's talk about this particular trial. Let's talk about what they charge Maria Aguilar with. This is the indictment and it charges Mayet, Shapiro -- and I am going to talk to you about Harry Shapiro, you remember him; I'm sure you can't forget him -- Robert Kelly, he just appeared, and Maria Aguilar with a conspiracy to violate the narcotics laws of

the United States of America. That is what she is charged with in Count 1. But you have witnessed in this United States District Court in the past week another conspiracy, a conspiracy by the conspirators, by the informants, because you saw a number of people give testimony from this witness chair under oath whose testimony you have an obligation and a duty and a responsibility to those two who are presumed innocent to scrutinize carefully.

The list of Government witnesses reads like a who's who from the narcotics field. The garment center, 1411 Broadway, New York City.

Let's take the best of all first. Let's take Harry Shapiro because it is Harry Shapiro and only Harry Shapiro that if you believe him, everything that man said concerning Maria Aguilar, then you are going to find her guilty. I am not a fool, so let's talk about Harry, because an awful lot of testimony in this trial didn't concern Maria Aguilar. You sat here and you know what you heard. Very few people had anything to say about Maria Aguilar except Harry Shapiro. That is the Harry Shapiro who wants to cooperate with the United States Government. That is the Harry Shapiro who has suddenly turned good guy, who comes into this courtroom and from his memory, a fine memory he must have, a very concise, sharp, brilliant mind, to come in this court and go back to

dates in July, July 9, July 10, and tell you from memory exactly what took place.

I don't believe it was really from memory. I am going to tell you how I guess Harry Shapiro remembered what took place, and it is only a guess, but you see if you agree with me. I think Harry Shapiro spoke to the Government. I think he talked to them before he took the witness stand. I think that the Government assisted Mr. Shapiro in coming forward and giving information. You don't really think Harry Shapiro remembered every minute detail from July 9 and suddenly appeared in this courtroom. You see, when a case comes to trial it is prepared. It is ironed out. The rough edges are taken away and hopefully the Government presents to you an excellent case. Well, that is not the way it always works. First, what does Harry Shapiro have to gain or lose by coming into this courtroom and testifying against Maria? And why Maria, on the basis of that testimony? Why her? Let's analyze it for a moment.

Some people came into this courtroom already in prison, not a very pleasant experience to go to prison, but they brought them in. Mr. Shapiro knows these people. Mr. Shapiro has talked to these people. Mr. Shapiro does not -- and I think right now the line starting with you, all the way to the end, we can agree on one thing: do you think

Harry Shapiro wants to go to jail? Yes or no? If we can agree on that one premise -- and do you think if Harry Shapiro faces ten years in a federal penitentiary, do you think he is going to cooperate in an effort to do the best job he can to convince the Government of the United States so that maybe he only has to serve two years or one year? Of course. Harry Shapiro is going to tie everybody in to this case because the bigger the better. So Harry Shapiro decides, I am going to give them everything. I am going to give them Mayet. I am going to give them Aguilar, because they just may ask about Maria Aguilar and if I don't tie her in somewhere along the line, I'm not cooperating with the Government.

You are going to have with you in the jury room all the exhibits, and one of those exhibits is going to be this particular pocketbook. You heard Candy testify --

THE COURT: Mr. Willis, I follow the practice of telling the jury if they want an exhibit to send out a note and we will send it in. I don't follow the practice of giving all the exhibits to the jury at first. I wait and let the jury ask.

MR. WILLIS: I'm sorry. Thank you, Judge.

If you want this pocketbook you can have it.

JUROR NO. 5: I would like to see something, Can I touch it?

THE COURT: You wait and send a note and we will send it in to the jury room.

MR. WILLIS: You may want the pocketbook.

You heard Candy Mayet tell you, and I'm sure you've seen in fashion magazines and even in the City of New York, you have seen men with handbags, those long handbags, shoulder bags they wear, and I'll bet you've even seen men with pocketbooks, things you would classify as pocketbooks. They are in fashion.

Harry Shapiro said to you that he likes to dress well. Do you remember that? He said, I don't have enough money to buy what I want, but I like to dress well. He is a pretty sharp guy, long hair. He seems to be in style. He works in the garment center. He sells in the garment center. The garment center is what would you say, the most hip dressers in the State of New York or in the city of Manhattan? It is all the fashion industry. The latest dressers are in the garment center. If you've ever gone to the garment center you will see men with pocketbooks. It is not inconceivable to you as jurors that Harry Shapiro could have taken possession of this particular pocketbook way back in the store.

Maria Aguilar worked, and, believe me, she worked, in that particular store, and there were pocketbooks around in the store. One of the witnesses said she may have had,

although he didn't remember, another pocketbook on that day. Candy Mayet said that she had a chocolate colored pocketbook and that Harry Shapiro had this bag at all times. Another important point: who in this trial ever told you on the witness stand that they saw Maria Aguilar with cocaine? Did anybody? My memory, and you control the facts, tells me that no one said it. I asked every witness who had anything to do with this matter and anyone who can say anything about Maria Aguilar, "Did you see Maria Aguilar possess, hold, distribute cocaine?" Here it is. The second count of the indictment. If I can find the indictment. It says that Maria Aguilar, Harry Shapiro and Candy Mayet did unlawfully distribute and possess. Possess and control. Did anyone tell you that? No, they surmised and guessed.

Mr. Shapiro came into this courtroom and said he brought Susan Marcus from New York into New Jersey and he placed a phone call when he was in New Jersey when Susan Marcus was standing by his side. That is what Marcus said, I was standing there, Harry went to the phone and he called someone by the name of Maria. Do you remember her saying that? In reference to cocaine for me.

Do you remember Harry Shapiro's testimony? He came in and he said to him, "Mr. Shapiro, did you use the telephone and did you call Maria Aguilar when she, Susan Marcus, was

standing next to you in the store?" And his answer was no. Direct contradiction of Marcus' testimony, and Susan Marcus wasn't even sure. Shapiro says that he called on the telephone to the place of business where Maria worked and he got a call back and Maria said to him, "I've got four ounces of cocaine," and moments later Maria arrives. She doesn't arrive with four ounces, Shapiro surmises. Which leads me to one more question: If the storage place -- because that is what the Government is trying to get out here by all circumstantial evidence -- that the place where the cocaine was stored, and let's come out and say it, was in Maria Aguilar's apartment. That is the apartment where Mr. Mayet said that he knew where she lived, she lives there with her four-year-old daughter. That is where it is stored. Well, if it's stored there and it's the package house, why, when the Government agents came to New Jersey and tried that key in the mailbox, why didn't they, with a warrant from the United States Government, enter her apartment to get all that cocaine out, take it all out? They didn't do that, did they? All they did was went and tried the mailbox. Do you think that fine Government agent who is trained to search for narcotics is going to go to this girl's house who is supposed to be a storage bin for cocaine and he is going to try the mailbox and he is not going to go upstairs to where all that cocaine is laying? Come on,

ladies and gentlemen.

You know, this case is based upon one thing, the ability of all the Government witnesses to convince you to save their own necks. If they are not in jail they are on their way, and if they are in jail, they are looking to get out earlier. You heard them testify, Mr. Roth, that he comes around for his first probation soon. One thing that's happened in the trial lawyer's business recently concerning this entire scandal of the United States Government from top to bottom --

MR. BUCHWALD: Objection, your Honor.

MR. WILLIS: This is summation, your Honor.

THE COURT: I will permit it.

MR. WILLIS: -- has been that people are beginning to believe. People just like you. Five years ago, five and a half years ago when I first started to stand before juries and I would say to them, check what the Government says, it is not always the way they say, United States Attorneys, I represent the Government of the United States of America. Well, I represent a citizen of the same country who has the same rights that every one of you have, and she has a right to be protected from this ridiculous flimsy circumstantial evidence. People who sit on juries are beginning to get suspicious of the things said by witnesses for the Government.

Just because you are cloaked in the terms "Government witness" means no more in this country than it does if you are a defense witness.

Let's talk about the burden of proof. Who has got the responsibility in this case? Me or Mr. Buchwald? The judge is going to tell you. He is going to tell you what the law is in this case. But he will tell you that the burden is on the Government to prove each and every allegation made in a criminal trial beyond a reasonable doubt. They don't pick phrases out just because they sound good. Beyond a reasonable doubt. It means something. When you go into that jury room it ought to be burned into the walls, one, the burden of proof, that the Government's responsibility is to prove each and every allegation in this indictment. Second, that they've got to produce the evidence to convict. Third, that the evidence has to be so convincing that it is beyond a reasonable doubt, that you don't sit and you don't speculate or guess or have suspicions. I want to see some clear, convincing, good evidence in this case to convict Maria Aguilar. She is a victim of desperate men and desperate people. They have put 2 and 2 together, but their 2 and 2 adds up to 5, not 4. They have tried to mesh something that you can't mesh together. They have tried to take a round peg and put it into a square. You can't do it.

It has been frustrating sitting during the course of this trial and listening to things that are said that are of no concern to Maria Aguilar. They have dragged her in. They indicted her. She never appeared before the grand jury. She never testified and gave her side. Now she comes to this trial and two witnesses, two witnesses, the other one was Mr. Roth. He comes into the court and he says that he saw Maria hand the pocketbook to Candy. I don't want to hide these things from you. I want you to talk about them. I want you to go over them. Why would Bruce Roth come into this courtroom and say that? That is damaging evidence against Maria. That would mean Maria had the pocketbook and it would mean that Maria passed the pocketbook to Candy. That doesn't help us.

But let me say something to you. You saw me question Mr. Nesland. I asked him why on the two statements, Statement 1 from Shapiro, Statement 2 from Bruce Roth, off the main body of the statement in small handwriting was that particular thing, "pocketbook passed." I am going to tell you why. Because the key to this case, the key, and if they don't get it in and they are not sure that they get it in, they are going to have a lot of trouble convicting Maria Aguilar. Do you think that Mr. Roth, Bruce Roth, he has been in Springfield penitentiary, the hospital facility, he has been there,

sentenced by a court of law, that he remembers that that is the thing that is on his mind when they bring him in from Springfield, the pocketbook was passed, or do you think that that was gone over with the Government and that he came in here knowing what he had to prove to you and that if he didn't prove it, if he screwed up, if he fouled up, if he missed an important point -- I feel sorry for Bruce. How about Harry Shapiro?

There is the one that you've got to really look at, because nobody else hurts Maria, nobody. I asked the United States narcotics agent, I said to him, "Why was it ten days before Maria Aguilar was arrested? You got the information on July 9, why did you wait?" And do you remember what he said? I was so proud I caught him, it's hard to catch him, it is very hard. He said it took ten days in order to get her real name. You don't really believe that the United States Government, with all their resources, takes ten days. When I asked him and cornered him and boxed him in, he finally said, "Well, we got the name in two days, Mr. Willis." You see, that is the game played here. Well, why the other days? Maybe the Government had to make sure that they could really tie this girl in. Maybe it took ten days in order to speak to Shapiro and tie her in and get this guy to tie her in and scare them enough and threaten them

enough and tell them if you don't give us -- maybe it took ten days to get that information before they could arrest Maria Aguilar. Only they didn't arrest her, did they? When she found out, she came over to New York and she turned herself in. That is very interesting. That must have been a hectic day for the United States Government. They had to get statements and evidence. They had to convince and do whatever they could to get what they needed.

Some of you, and lawyers sometimes try to read juries -- and it is a very dangerous game, everybody gives an attorney different expressions and different looks during the course of a trial, and they look at witnesses different ways. And they sit there and say, "That one is against us and that one is for us and that one is against us." Sometimes we think that Maria is here because, "Oh, she must have done something wrong. Maybe, Mr. Willis, she didn't do exactly what the Government said she did. The Government just wouldn't bring her in to trial."

Let me tell you something right now. If any of you, any of your relatives, any of your friends or any citizen has to stand on trial on the basis of what they have produced against Maria Aguilar, think about it, they dragged her in, they indicted her, they put her on trial, on the basis of Harry Shapiro and Bruce Roth. Shame on you, Mr. Government.

One last thing. Whatever is said, whatever took place in this courtroom, when you think of Maria Aguilar you are to analyze it on the basis of the testimony against Maria Aguilar. You are to ask yourself what has the Government produced in the way of concrete evidence beyond a reasonable doubt? They charge her with a conspiracy, you see, a conspiracy. The judge is going to tell you what the law of a conspiracy is and I might say it is not that simple, and I ask you to listen carefully. But one thing I can tell you, that you can't be a conspirator negligently. What I'm trying to say is you've got to get into it. You have to participate in it. You have to be part of it. You've got to have knowledge. I won't say any more, but the judge is going to explain to you what he means.

This indictment charges that from the first day of May, 1973 until July 9, this girl was an active conspirator with Harry Shapiro, Robert Kelly, Candy Mayet. Okay? What did Robert Shapiro have to say about her being a conspirator? There is one conspirator. Nothing. One down. Okay? There is a guy who was part and parcel of the conspiracy. There is a guy who has pleaded guilty and is going to be sentenced. One conspirator says nothing about her but he is part of the conspiracy.

The other conspirator is the co-defendant. The

other conspirator is Harry Shapiro. What does Shapiro say? From May, the first day of May 1973, until July 9. Think about it for a minute because it is important. The only thing he can tell us is that he didn't place a phone call to Maria's house in May to get cocaine for Susan Marcus. Marcus says he did, but Shapiro says he didn't.

So this long conspiracy that started in May concerning the sale of cocaine and discussions about the sale and the use of cocaine by Harry Shapiro, all of this, has nothing to do with Maria Aguilar. She wasn't part of it. There is no evidence to attach her to it. The only thing the Government says, by way of Harry Shapiro, is that on July 9 she participated. But all the other times no mention of her. But yet the indictment says that on or about the first day of May 1973 she participated as a co-conspirator. I want to know what did she do, Mr. Government, from May 1, 1973 until July 9 that makes her part of this big plan to distribute and sell cocaine.

In conclusion, when I opened I gave you a fable from Aesop's Fables. It was the story of the monster on the moon, and I said to you at that time and I didn't know, sometimes trials don't go the way you expect them, I didn't know how relevant it would be to this particular trial about the man who takes the top off the microscope and he finally

finds out there is a bug in the telescope, because he didn't believe what everybody else said. He wanted to scrutinize it.

There is another fable, a very interesting one, very apropos to Marcus' situation here. It is called The Wolf and The Grasshopper. It goes like this:

One day a wolf was walking through the forest and he came upon a little grasshopper that was jumping in the grass. And he scooped the grasshopper up and he held him in his hand and he examined it and he was about to kill the grasshopper. And he looked at him and the grasshopper looked at the wolf, and the grasshopper said, "I have done no wrong. I have hurt nobody. Why do you want to kill me?" And the wolf looked at the grasshopper and released him.

Unbeknownst to the wolf, a bear had entered the forest and just as the wolf released the grasshopper to live, the bear grabbed the wolf. The bear had watched the whole thing and the bear looked at the wolf as he held the wolf by the throat, and he looked at him and the wolf was just about to say what the grasshopper said. And the bear without hearing it, because he had already heard it, released the wolf and let him live.

What has Maria Aguilar done by way of concrete, believable, real evidence in this courtroom except by way of two people, circumstantial evidence. Maria didn't participate

at 1411 Broadway. She didn't discuss this with anyone. She wasn't in the taxicab. She didn't talk to any of these fellows about cocaine. She didn't talk to Harry Shapiro about the sale of cocaine. She didn't talk to Bruce Roth about the sale of cocaine. She didn't talk to anybody who came into this courtroom and testified against this girl.

What did she do? Because she had a pocketbook that Harry Shapiro thought -- do you remember someone saying it was Harry's belief, the belief of Harry Shapiro that has put this girl into this trial, not what he saw.

Mind you, I'm not even defending something that Shapiro comes in and says "I saw Maria hand the cocaine." It is his belief that Maria had the cocaine. Shapiro, the all-American boy's belief, that puts this girl on trial. And when you go in the jury room, think about it. Concrete evidence; no. Direct evidence; no. Circumstantial; yes. The belief of Harry Shapiro. You think about the beliefs of Harry Shapiro, and if you can come out of the jury room on the basis of Harry Shapiro's testimony in this trial against Maria Aguilar after you have heard what he is, on his belief, you convict her.

Thank you.

MR. STONE: Judge Wyatt, Mr. Buchwald, Mr. Willis, Mrs. Seigel, and other ladies and gentlemen of the jury:

We haven't been here that long and it has been a rather simple case. Thanks very much for paying attention to both sides of a situation.

Almost 200 years ago a group of men got together in Philadelpnia, and I say "group of men" because that was before women's liberation, and they formed a Declaration of Independence. They formed that for the purpose of separating the 13 colonies from the rule of the King of England. They were looking for certain inalienable freedoms. They got them after fighting a war. Two years after that they got together and they formed a group which wrote the Constitution of the United States. The first ten amendments guaranteed to the individuals of our government their rights against the rulers of our government. They have recognized at all times that the people form the government. We the people may not administer all aspects of the government, but we form the source of power. We form the beliefs that our representatives must carry forward. In performing a government function of being a jury, you are giving an individual defendant the same rights that you would have if the administrators of your government were accusing you of a crime.

Mr. Mayet has a constitutional right to be tried by a jury. Citizens of this country with no greater knowledge or no less knowledge than any other human being. There is no

training to be a juror. There is no school for jurors. There are schools for federal agents. There may be schools for federal prosecutors. There may be schools for defense attorneys. But there is not a school for a jury. You have a function to bring together into this jury room your common sense, your background and your experience, and merge it together with your different views, the same way that the people in Philadelphia in 1776 combined their views to get a Declaration of Independence. Your views and your common sense will bring forward a verdict on another human being.

At the beginning of this trial I challenged Mr. Buchwald to bring to you at the conclusion of his case his check which he would ask you to cash, and if that check had holes in it, I asked you then, and I am asking you now, not to cash it.

What am I going to ask you to do to look at his check? I am going to ask you to review the testimony of the Government's witnesses and to see how many holes there are in that check. You have one job that no one can take away from you. That is that you can assess the witness' credibility, accept any portion of it you like, disregard any portion of it you don't like, accept it all, disregard it all, believe them or not believe them. That is your function as 12 jurors. Nobody takes that away from you. It is an awesome

responsibility when you realize the consequences of your decision.

The first witness that the Government brought forth was Michael Lorber. Think how all of these witnesses are playing that old game of hot potato. I got the potato but I've got to get rid of it fast. And that is the way they play their role in handling cocaine or their role in promoting a situation.

For example, Michael Lorber stated that he called Harry Shapiro directly. He asked for Bobby but Bobby wasn't there. And Harry Shapiro mentioned cocaine to him. Shapiro got on the stand and in the same set of questions he said that Lorber called Bobby and Bobby gave Shapiro the phone. Lorber gets the cocaine over to Shapiro a little more. What else does Lorber say? Lorber says that he has a conversation with Shapiro concerning Shapiro's ability to deliver cocaine that night. I am not talking about July 8 or 9. I'm talking about the 2nd or the 5th, a week or so before the 9th, and Shapiro tells Lorber, "I'll get you that cocaine tonight." But Lorber says my man isn't ready yet, I can't buy it tonight. Lorber has Shapiro ready, willing and able to deliver immediately and Shapiro comes in and says not so, I didn't say that to Lorber.

The same emphasis of this hot potato goes right

through this case when you come to Susan Marcus. Lorber claims that Marcus called up. She mentioned cocaine first. Lorber has got to get away from that hot potato. He has to move away, shift that cocaine to someone else. Susan Marcus said no, I never mentioned it first, Lorber mentioned it first, a conflict between the Government's own witnesses. Lorber testified that on the meeting of June 25 or late in June, Susan Marcus came to the showroom before Harry Shapiro. Susan Marcus got on the stand and said yes, I got to the showroom first and I waited for Harry Shapiro, anxious for that cocaine. But Shapiro has got to get rid of that football. I didn't come first, excuse me, he says Susan didn't come first, I came first and Susan wasn't there. Conflict between the Government's own witnesses.

Lorber, who has got to help here for his own reasons -- and you can judge his motives, you will judge him as you would want to be judged or have someone else judge you -- Lorber testified that that evening Susan Marcus called him and mentioned Candy by name. Susan Marcus testified that she never mentioned any names. Conflict No. 7 between the Government's own witnesses.

Lorber testified that Susan Marcus told them she went to a boutique. Susan Marcus testified that she knows what a boutique is, she is a female and she shops. She went

to a shoe factory in a shoe store and didn't mention the word "boutique" to Lorber. Someone has got a little bit of an imagination that is creating a doubt in a particular case. Susan Marcus claims she spent $250. She drew this sum out of the bank. She gave it to Shapiro. Shapiro dropped that money down to $235, $240. The Government will say "So what? What is $10? Cocaine is the transaction." Susan Marcus testified that she wasn't quite sure who gave her that package of cocaine, but Shapiro is sure, Mayet gave it to her. He has to get rid of that hot potato.

What about the call? Susan Marcus claims a call was made to an alleged Maria. Harry Shapiro claims it was made to another store where Mayet might have visited to buy supplies.

These are some of the conflicts between the Government witnesses and themselves.

Lorber again, "I received a sample. I paid $20 for this sample. I threw it in the toilet." Shapiro, "He must have known that it was good." Roth knows nothing about this sample at all, another conflict between the Government's own witnesses and the fact-finding process that you have to determine.

What about the names? Lorber claims he used the name Lorber. Shapiro called him Molina. Roth referred to him

as Lorber. Are they confused or are they talking about someone else? What about Shapiro's cooperation, and when did he cooperate? Shapiro testified on the stand that he began to cooperate a few days after his arrest, after he met Mayet near Jeno's. The United States Attorney, Mr. Nesland, testified that he cooperated before bail was set on him at 12:45 on July 10, 1973. The federal agents testified that he was willing to cooperate immediately after his arrest. Who do we believe?

We have other small conflicts, small, but doubts, doubts that are based on reason. Korniloff testifies about going into the Market Diner. He doesn't see Mayet at all. Hall sees Mayet across the street from the Market Diner. Sullivan sees him right in front of the Market Diner and right on the steps at the same time he sees Roth and Shapiro go into the Market Diner with Korniloff.

Shapiro testifies that he never touched this package, this large silver tinfoil package. He never touched it. So whose fingerprints could have been on it, and where is a fingerprint analysis?

Going to each individual motive as to why they are here, and remember what I told you at the beginning of the case, that the Government knew that their case against Mayet was going to rise and fall with Mr. Harry Shapiro. They knew

that. So they went out to get Susan Marcus because they knew that Susan Marcus was possibly afraid of being prosecuted by the same agency that handles physicians' licenses, and Susan Marcus' husband was a physician. The agency that questioned Susan Marcus, and she cooperated in a hurry. She told a story and asked for advice of Harold Baer, her attorney, a former chief prosecutor in this office. Then she told her story of the sniffing of cocaine. But she left out certain facts. Let's go into your common sense. You go to the grocery store and you talk to the guy behind the counter. A friend of yours is taken into that store. Here is the man in charge of the grocery store, and you want to buy groceries. Do you ask him whether his vegetables are fresh? Do you ask him when they come in, how often he gets his supplies in? You are buying from him even though you may be paying the cashier.

Susan Marcus waits three, four, five hours to get her cocaine. She is willing to take money out of the bank. She is willing to go and wait at 1411 Broadway. She is willing to take a bus from Jersey and go from a factory to a store and wait in that store and wait in that factory. But she doesn't ask one simple question to the person who is supposed to be the supplier of narcotics as to whether or not his narcotics are good, are they bad, can you get me more, or can you make

the next deal a little easier for me. If you went to buy anything and you knew that the supplier of that product was over there, wouldn't you ask him the simple question as to how his goods are, how he delivers and when he can deliver? But no, Susan Marcus, who spent six hours waiting, didn't ask him a simple question because he was not involved.

And going to the questioning again of other human beings. The agents have a duty and they are performing it the best way they can. In the course of an undercover transaction, Agent Korniloff has the right to ask the suspected dealer, who in this case is Harry Shapiro, certain questions, and he performs his role as an undercover officer. He told you about his role. He tries to find out whether the narcotic is good or bad. He tries to find out where the person got it. He tries to find out how much narcotics he can get, how easy is it to get. All these things. That is his job.

Does he ask one question of Shapiro before Shapiro is arrested? "Harry, is this good stuff? Who do you get it from?" If the truth was that Harry Shapiro was getting it from Candy Mayet, do you think that for any reason Shapiro wouldn't have said at that time, "I've got a Cuban connection, he is outside in red pants, he has a shoe store, he gets me stuff." Wouldn't Korniloff as a good undercover agent say, "Why can't we bring him into the deal, why can't I deal

direct, let me talk to him in case I want to spend $5,000 next time or $10,000. Where does he keep his stash?" All these things that a human being would ask another human being in a simple, above-board transaction, let alone an undercover transaction where a federal agent is sent in there for a specific purpose, to find the source of the narcotics, to find out where the narcotics are stored and to find out whether he can get a large amount of narcotics.

I asked Mr. Korniloff, and I think Mr. Hall, if they found out that there was two or three kilos of narcotics around, wouldn't they inquire? Oh, yes, we would be very interested. They tell you on the witness stand "if time permits." Well, time permitted six or eight federal agents to leave their job on a ten-minute phone call and appear at the Market Diner. Certainly time would permit these same federal agents from investigating during the course of these transactions where the source of supply was. And don't you think they had electronic equipment, radios or something else where Agent Hall could have spotted that man in red pants? The suspect who he never saw before, who was never pointed out to him before, to find out whether in fact that was the suspect? And if it was, why didn't he follow him some place, especially if he thought an arrest took place. Remember, the arrest took place in the basement, in the men's room. There

is no way that any human being can stand in the corner opposite the Market Diner and to look down in the basement to see whether an arrest took place or not. His eyes simply aren't that good.

Hall says, "I could have followed the cab if I wanted to, but I didn't want to." Well, Sullivan comes along and he tells you about three minutes later that we couldn't have followed the cab, it was impossible. Either Sullivan or Hall are mistaken. They are misleading you or they are trying too hard to get a conviction.

It comes to Mr. Mayet's statement. Mr. Mayet took the stand. He testified as to what statements he made. He testified as to his reasons. The agents testified that he made these statements the day he was arrested, came by the Market Diner. See the Market Diner, that is where the big narcotics transaction took place yesterday. Mr. Mayet denies any pointing out the Market Diner. He is a little confused but admits making the statements the following day to the United States Attorney. But the agents have him making them that day in that car. These are our trained agents, your representatives to enforce the law. If they make a mistake against Mayet, would you want them to make the same mistake against you, against your brother, sister, mother, father, or your child?

Paragraph 4, Defendant's Exhibit B in evidence, statement of Korniloff: The defendant declined to make a statement and was lodged at the Federal Detention Center, West Street, New York.

Declined to make a statement. He didn't say declined to make a written statement. He declined to make a statement. Is he insulting your intelligence on the knowledge of the English language or is it a fact that he didn't make a statement, only the one the next day which Mayet admitted?

And let's go to that statement of the next day. What was asked, what wasn't asked, and what was said.

First we have the 1:30 p.m. and the 12.00 p.m. All right, the agents can make a mistake of a couple of hours. They can make a mistake of a few words. They can make a mistake of a couple of human beings here or there, but are you going to make the same mistake in judging this man? They can make that mistake and they can walk out of court. You've got the burden of deciding whether that mistake is a fundamental mistake that lingers with you as a doubt in favor of Mayet.

Look at this statement, it is in evidence. I will read it to you, the notes. Defendant's statement, "Never sold narcotics to anybody." It omits any question or answer as to whether he ever used narcotics. "Shapiro, a salesman in my factory. Last time I saw him was Monday at my store,

Puma, I own it, ladies' shoe store. I sell shoes and work at the factory, 7315 Bergenline Avenue, North Bergen, New Jersey. 1:30 p.m. he came into my store. I told him I had to deliver shoes in Brooklyn. He said he would be back later. He left and never came back." A misstatement, no question about it. Explained to you by the defendant before the Government had a chance to do anything about it. That was all the conversation I had.

Any question about passing the Market Diner? Any answer about the Market Diner? Any question about desiring his cooperation? The Government arrested Roth. They arrested Lorber. They questioned Marcus. None of them were ever asked who their sources of supply were for anything else in any other case. The only cooperation that Roth and Lorber gave to the United States Government was their testimony of July 18, 1973 directed at one individual, Mayet, the Cuban connection that they needed, because if they didn't put a Cuban into this case, the case ends with Harry Shapiro, and there would be no further prosecutions.

Defendant's Exhibit E, a statement by Korniloff approved by Hall, the name of this case, Harry Shapiro et al. Sure, there are other names but they are provided after July 11, 1973. Shapiro again as to who came into that store first on July 9:

"Q. Prior to the time that Marie came to the store did Candy them come to the store?

"A. Yes.

"Q. While you and Candy were at the store. Did you then observe Marie come into the store?

"A. Yes."

Those are clear questions. At trial he has Marie in the store first and then Candy. Why? He has got to have a little argument here as to how he brought Maria in. He brings that argument in before. He gets there, Maria is there. Then Candy comes. If Candy were there, there wouldn't be any reason for an argument, so he changes the story around to push that hot potato a little closer to someone else.

Let's go into your common sense again. Does it take three people to carry this package that I can hold up with two fingers and any baby can hold, to physically transport it across New York? If you had a hot potato and you knew it was hot, wouldn't you want to stay away from it, would you want to go near it? But Shapiro tells us that all three of them came to New York with this package and for what putpose? According to Shapiro, he doesn't want Mayet to go into 1411 Broadway to meet Mike. He doesn't introduce Marie to anyone. Marie, who is supposed to have this great interest in this package, disappears on the corner of Broadway and 39th or 40th

street, takes the car and goes. If you own something of value, would you trust it with anybody and just go away and if you did,what would you come to New York in the first place for? If Shapiro is what he claims he is, a delivery boy from someone else and he is the patsy, what does he need these two people around him for? He gets the delivery and gets the money and turns it over to Mayet and to Marie. Does he need them to guard him?

Shapiro himself admits that Mayet had business in that lumber yard in that corner. Shapiro, the man who lives with a young lady and pays $245 a month rent, whether she pays half or not, I don't know. He is testifying against another human being, a human being who you have had the privilege of watching testify. A human being who got up on that stand and threw open for your consideration his past, his present, and leaving to you his future. He allowed himself to be questioned completeley and extensively by the United States Attorney as to his whole background. Did he equivocate one second in the questioning to the United States Attorney the way that the Government witnesses hesitated when they answered questions of both defense counsel? Or did he answer straightforward, truthfully and sincerely? He told you certain facts which you cannot let escape. Those facts are simple. He is 25 years of age, separated from his wife and

infant child. He finished three years of school and has worked all his adult life. He testified that several agents had been around his store after his arrest. No rebutal testimony offered to that. Why were they there? If they had a suspicion that he was involved in narcotics, they had a legitimate right to try and follow him to see if he knew anybody in the narcotics business. But they didn't tell us that they saw him again fully employed after his arrest at the same place they found him on July 10, 1973, after six and closing the store. If this man thought that he was involved in a narcotics transaction and he thought that Shapiro was testifying against him and he thought that he would be arrested and convicted, would he go to his store and work a full day on July 10, or would he simply take the first airplane he could get and go? But no, he is a hardworking refugee from Cuba. He has worked or gone to school ever since he has been to this country and he worked and has gone to school from the day of his arrest and the day after his arrest until the day he came into court and took the witness stand. That is the human being whose fate you are to decide on the evidence of those four other people.

What else did he have to offer on his behalf? He brought forth two friends of his, character witnesses. They testified as to his reputation in the community. They are

working people, an honorably discharged veteran. They gave time off from their jobs to come in here and tell you their opinion of Mayet's reputation in their community. That is something you have to consider. Remember, there were no character witnesses for Shapiro, no character witnesses for Susan Marcus, who might have been playing games with her husband. No character witnesses for Michael Lorber. No character witnesses for Mr. Roth. But there were character witnesses for Candido Mayet. His father came on the stand and testified. And he told you how he bought the store with his money. How he worked, how his wife worked. How his daughter was going to college and the two old cars he owned and how the whole family lived in one house. Is this the type of person that's a dope peddler? A 1969 station wagon and a 1968 Dodge in 1973? He hasn't got the money to buy himself out of a paper bag, but the Government will tell you that he is the big "Cuban" connection.

How much money did he have when he was arrested? It was not rebutted at all by the Federal Government. About $20 as Mayet said. Again, the agents didn't even bother to search the store or search the car because they knew that there were no narcotics there, nothing to do with narcotics, nothing. And yet you have to use your common sense to assume that Mayet did not know that he was about to be arrested. So there

was no reason for him to hide anything or hide himself.

When I went into my notes at my office I found a script of an old Broadway play, Bells Are Ringing, an old play that Judy Holliday did about 10 or 15 years ago, and for those of you who were too young to remember it, it was a short play about a girl who operated a telephone switchboard and she delved into the lives of many of her telephone subscribers. And there were two policemen in that play and they continually felt that she was doing something of a criminal nature because their job was to investigate crime and they followed her to where she met these different people at different times to give them their telephone messages and to intercede in their personal life where she shouldn't have.

One inspector asked the other officer, "What did they do," and the officer says, "They took a cab to the theatrical office building and she waited outside." "What did she do?" "She bought a bag of peanuts, threw them at some pigeons and then had a fudgicle." "Is that all? Is that all?" "No, the essence of the crime." "No, he came down an hour later and looked kind of dazed and then it started to rain." "Then where did they go?" "He tried to get a cab, she kept saying to never try to get a cab and try to get the subway." And he said, "They can't get a cab, and they ran down the street yelling, taxi, taxi." The inspector thought it was a

crime to get a cab. Here they tell you because Mayet paced up and down that he had guilty knowledge and because he was running someplace, and he was running someplace and they didn't even bother to chase him.

These are doubts which you have to resolve. You will do it on the basis of your conscience and your experience in assessing the evidence and, as I say, the extreme lack of evidence.

Harry Truman, our late president, once said that the buck stops here. In a criminal case the buck stops with you. The fate of Mayet is in your hands. You the people of the United States don't pass the buck. Judge Mayet not guilty.

Thank you.

THE COURT: Madam Foreman, ladies and gentlemen of the jury, suppose we take a few minutes off. You may retire to the jury room.

(The jury left the courtroom.)

THE COURT: Suppose we take a few minutes recess also.

(Recess.)

(In open court; jury present.)

THE COURT: Mr. Buchwald, will you address the jury.

- - -

MR. BUCHWALD: May it please the Court, your Honor, Mr. Stone, Mr. Willis, Mrs. Seigel, ladies and gentlemen of the jury:

You have now heard all of the testimony in this case and you have also heard the closing statements of the defendants' attorneys, and it is now the Government's turn.

I remind you that the evidence in a case does not include the remarks of the attorneys. What I say to you now isn't evidence, just as what Mr. Stone said and Mr. Willis said is not evidence. The evidence consists solely of what you heard the witnesses say from the witness stand and of the exhibits which have actually been admitted into evidence, including the cocaine and the price list and the pocketbook and the keys. And finally, before reviewing that evidence with you, I ask you to focus through the smokescreens and through the dust that has been freely sprinkled about to the real issues before you.

The issue is not whether Susan Marcus paid $240 or $250 for the cocaine she bought. The issues which you must decide, based on your recollections of the evidence, not my recollections, not Mr. Stone's, not Mr. Willis', are whether these defendants on trial were participants in a conspiracy to sell and distribute cocaine and whether these defendants on trial on July 9, 1973 distributed or possessed with intent

to distribute the three ounces of cocaine which were ultimately seized by federal agents from Harry Shapiro.

As to these issues, ladies and gentlemen, the real issues in the case, the evidence is overwhelming.

First, ladies and gentlemen, I would like to review the evidence. First from the perspective of the defendants' conspiracy theory. Their conspiracy theory. The Government's witnesses, they say, are bad people. The Government's witnesses, they say, are hopeful that by not telling the truth about their clients, by perjuring themselves in this court, that they will receive lighter sentences or have the sentences previously imposed reduced.

Let us examine who those witnesses were and what they said. Bruce Roth was a Government witness and he is serving a sentence of a year and a day on an amphetamine charge to which he pled guilty, and after his own arrest he cooperated with the Government in this case and he testified that there was one other incident he cooperated in. When he was to come and testify, his family sent up a suit of clothes so that he could look nicer in court. You remember Mr. Willis asking him about that. You saw him testify. He appears to be a young man hopefully, maybe, who knows, on the way to being rehabilitated. The Government does not contend that Bruce Roth is an angel. He is a convicted felon, prosecuted,

convicted, and sentenced in this very court. Was he lying, ladies and gentlemen? What was his motive to lie? Why, if he is lying, does he do such a poor job? Ladies and gentlemen, if he was so anxious to sock it to Marie Aguilar and to make up a story about Maria handing the pocketbook to Candy Mayet after the telephone conversation with Agent Korniloff, and to make up a story about Maria holding the pocketbook when he first saw her in the hallway outside the showroom near the elevator and holding the pocketbook in the Squire Luncheonette across the street, if he was so anxious to make that story up and implicate Marie Aguilar, then why did he testify that Marie wasn't herself involved in the conversation pertaining to the cocaine? If he was anxious to lie and make up the story, why didn't he have her participating in the conversation? Because his recollection was that she hadn't participated because that, according to his best recollection, wouldn't have been the truth. Is that the testimony, ladies and gentlemen, of someone who you think is lying?

Then there was Michael Lorber. The same is true with him. He is serving a two-year sentence on the same charges. He testified about receiving the sample of cocaine from Bobby Kelly and Harry Shapiro confirmed that testimony. He testified about receiving the price list and Harry Shapiro confirmed that. He testified about introducing Susan Marcus

and Susan Marcus and Harry Shapiro both confirmed that. He testified to getting the phone call from Susan that evening and being told by Susan that she had been introduced to Candy and had gotten cocaine from him. Susan Marcus confirmed that that was exactly what had happened that day in New Jersey. Her recollection of the phone call to Mike Lorber that night was that she thanked him for the introduction.. She didn't recall specifically mentioning Mayet's name. Her recollection of the phone call was she said she was in a boutique. Ladies and gentlemen, is that the testimony of witnesses who have gotten together and decided through their conspiratorial processes to try to implicate innocent people?

Is Michael Lorber an angel, ladies and gentlemen? No. When he comes out of jail is he going to be a useful and solid citizen? Hopefully. Whoever knows that? Was he lying when he testified here? Incidentally, ladies and gentlemen, if he was so anxious to sock it to these defendants, why didn't he say that he saw Candy Mayet and Maria Aguilar and Marie holding the pocketbook? Why didn't he say that? Because he didn't see them. They didn't come into the showroom with Harry Shapiro. They waited in the hall. That wouldn't have been the truth. He saw only what he saw.

Then, ladies and gentlemen, there was Susan Marcus. You heard Assistant United States Attorney Nesland say that

it was Michael Lorber who first gave the Government her name. She said the last time she used cocaine or marijuana was three and a half weeks ago when the Government first contacted her. She recalled what she wore on the day that she met Harry at the showroom and went to New Jersey, and she recalled what Harry Shapiro wore. She remembered because she works in the fashion business and knows fashion, and that is just something she remembered. But she couldn't remember everything that Candy Mayet was wearing that day. You remember all the questions about that? How can you remember what you were wearing that day? Why can't you remember what Candy Mayet was wearing that day? What happened to all those questions? What was that all about? There is no question, is there, that Susan Marcus met Candy Mayet? No question, I take it, that they sniffed cocaine together in the back room at the Puma Shoe Store.

Was she lying when she said that Candy Mayet drove them from Fiesta to Puma in his station wagon? No. Was she lying when she said that Candy Mayet left Puma for a long time while she was there? Was she lying when she said that Harry told her that Candy had gone to Maria's? No, that is what Harry told her. Was she lying when she said she thought, she thought -- and remember, it is your recollection of the evidence which counts, not Mr. Willis' and not Mr. Stone's

and not mine -- that Harry called Maria from the shoe store? This is the great inconsistency in the testimony that the defense talks about, the great inconsistency. Ladies and gentlemen, just focus on that a moment. Susan Marcus had come to Mike's showroom with the idea that she was going to buy a quarter ounce of cocaine. She gets to the showroom and later she is introduced to Harry Shapiro and thinking that she is going to be able to buy cocaine right there, no, she is taken out by Harry Shapiro to New Jersey on the bus to Union City to the Fiesta factory. And she thinks now she is going to be able to buy the cocaine at the Fiesta factory. No, after she is introduced to Candy Mayet there the cocaine isn't at the Fiesta factory. They are going to have to go to the retail shoe store, to Puma, to get the cocaine. She is there for 20 minutes, a half hour at Fiesta, and then she rides in the car to Puma. She has already paid Harry Shapiro the money on the way in to Fiesta. Now she is at Puma and she expects, now I am going to be able to get the cocaine.

She is told no, it is not at Puma. You have to wait some more. And Harry tells her after Candy leaves that Candy has gone to Maria's to get the cocaine. That is what Candy had told Harry. And time passes. Now it is a half hour and an hour. She is a little frightened. She doesn't quite get her courage up enough to demand her money back and say she

wants to go home. But she is irritated that it has taken the bus ride out the New Jersey. She is at one store and then another store. She is saying to Harry, come on, let's get going. What's going on? And Harry Shapiro then makes a phone call. She has been told that Candy has gone to Maria's. Is it unreasonable for her to have assumed that the person that Candy was calling was Maria? Of course, you know from Harry Shapiro's testimony that Harry has not called Maria. He didn't call Maria because, as you know, Harry didn't have Maria's phone number.

What was Harry Shapiro's perspective? Here was this woman saying come on, let's get going. He knows the shoe store is only 15 minutes away from Maria's house. 15 minutes there and 15 minutes back, but Mayet has been gone for an hour already. It is an awful long time. Maybe he went someplace else after he went to Maria or went someplace before going to Maria. So he does make a phone call. The phone call that Susan Marcus thought was to Maria, he calls O'Maras. Is Candy there. And she can hear part of the phone conversation. Is Candy there, Maria, have you seen them? This is Harry. I want to talk to them. So was she lying when she said she thought that Harry called Maria? You remember Harry's testimony right on direct testimony was someone trying to fool you, right on the direct examination by me he said

I called O'Maras, a store. The great conflict in the testimony.

Finally, was Susan Marcus lying when she said that Candy returned and gave her the cocaine and that when she opened it Harry said, "Gee, that's a lot."

If Harry Shapiro had given Susan Marcus the cocaine, as the defense suggests, can you imagine what Susan Marcus' reaction would have been? Having been brought by Harry to New Jersey, having waited at the Fiesta store for half an hour, being told no cocaine here, the three of them having gone over to Puma in the car. She having waited another hour and a half or two hours, having been told by Harry that Candy had gone to Maria's to get the cocaine. If now when Candy returns and they go into the back room Harry had had it all along and takes it out of his pocket and gives it to her. Do you think that that is something she would have known? Can you imagine what her reaction would have been? Ladies and gentlemen, you saw Susan Marcus testify and I ask you again, is Susan Marcus, whose lawyer told her that the best thing she could do for herself was simply to come forward and tell the whole truth, is she lying?

Incidentally, if she was so anxious to implicate Candy Mayet, why would she say that she gave Harry the money?

Then there was Bobby Kelly who you saw this morning.

Candy Mayet says he doesn't remember whether he spoke to Bobby Kelly or saw him in New Jersey on the night that Harry was arrested. Does Bobby Kelly have much to profit by perjuring himself in open court before the very judge who is to sentence him next month? Does it surprise you, ladies and gentlemen, that Candy Mayet, who in the next few days would attempt to avoid being implicated by not telling the truth to the agents and to the Assistant United States Attorney, that he on the night of Harry Shapiro's arrest would attempt to avoid being implicated by buying Harry Shapiro off through Bobby Kelly?

Ladies and gentlemen, there was the testimony of Harry Shapiro and all of the cannons were trained on him, weren't they? This was the man the defense suggested master-minded everything, the man who hated his boss, the man who as a precondition to being rehired was instructed by his boss not to use cocaine in the store during working hours when he was working, but who the boss sniffed cocaine with in the store during working hours when he wasn't working. This was the man who hadn't sold cocaine to Susan Marcus in New York but instead had brought her to New Jersey and kept her waiting several hours and fooled her into thinking that Candy Mayet had given her the cocaine and that Candy had gotten it from Maria so that if he were every caught, he, Harry Shapiro, could plead guilty but maybe get a lighter sentence because other

people were involved, too. This was the man, according to the defense, who on July 9, 1973 when he planned on selling three ounces of cocaine, didn't come into New York alone to sell the cocaine but instead decided to come in with Candy and Maria and with the pocketbook which happened to have Maria's keys. A man who decided to bring along witnesses to his own crime. This was the man, ladies and gentlemen, who, when the sale was to take place at the Market Diner, persuaded his boss to stand at the corner instead of going to his father's office or to the lumber company, and why? As an alibi so that he could claim he wasn't guilty and blame it on somebody else? No. But so that he could plead guilty and be convicted anyway but be convicted with company.

Oh, this is a shrewd man, that Harry Shapiro, planting in all those people's minds even before he himself was arrested the thought that Candy Mayet or Maria Aguilar or both were his sources of cocaine. In Susan Marcus' mind and Bruce Roth's mind, in Bobby Kelly's mind.

You remember the testimony that Bobby Kelly told Mike Lorber that he had a Cuban connection. And in Michael Lorber's mind. Shrewd, this fellow Harry Shapiro. You saw him, how shrewd and intelligent and calculating. You saw how he answered every question flawlessly and with authority. How he remembered every date and every conversation and when

he made which statement to which agent and to which Assistant United States Attorney and what questions he was asked on each occasion and what answers he gave on each occasion. And the date that he testified in front of the grand jury. Is that your recollection, that he recalled all of those things? Brilliant was this man Harry Shapiro who would remember every phone call, even the phone call he made three or four weeks ago to Susan Marcus when he asked her if she was a federal agent and when she said no, then asked her for a date and then admitted freely on cross-examination that he had asked her for a date. Brilliant, shrewd, calculating, this mastermind of it all. Harry Shapiro is no prince, ladies and gentlemen. He is an admitted felon in this very case who is to be sentenced this very week. But neither, ladies and gentlemen, is he a shrewd, calculating, brilliant mastermind.

Look at all of the significant portions of his testimony corroborated by others, his testimony concerning Susan Marcus. His testimony concerning the sample of cocaine. His testimony concerning the price list. His testimony concerning the trip to 1411 Broadway with Mayet and Aguilar. His testimony concerning Aguilar giving Mayet the pocketbook after the phone call to Greg. His testimony concerning Mayet standing at the corner by the Market Diner. All of this testimony confirmed by the testimony of others and by the

exhibits, the pocketbook and the keys. What does the defense say? They ask why does it take three people to carry three ounces of cocaine? Why, ladies and gentlemen? Because it is one thing to trust Harry Shapiro with spoons of cocaine to sell, tiny amounts like the sample Harry gave to Bobby Kelly to be given to Mike Lorber, which Bobby in fact sold to Mike Lorber for $20. It was one thing to trust Harry Shapiro with such tiny amounts of cocaine. If Harry didn't turn over the sales proceeds, you would always deduct it from the amount due him on his shoe sale commissions. It was quite another thing, ladies and gentlemen, to trust Harry Shapiro with three full ounces of cocaine, a package of cocaine just slightly too big to fit comfortably in the pocket of a man who was driving. A package of cocaine which was to be sold for $2,250. No, with merchandise so valuable, one would be right there, not so close at the time of the deal itself so that if things went wrong you would be arrested on the spot, but close enough to make sure that right after Harry got his $2,250 you would be there to collect your $1600 off the top.

Counsel suggests that Harry Shapiro is lying about the phone conversation with Maria on the morning of July 9. He says that Harry wants a lighter sentence, so now he is lying in front of the judge in order to get a lighter sentence. But why, ladies and gentlemen, if that was really his motive,

to implicate someone else in the hopes that that would get him a lighter sentence, why would he have lied about Maria? Right after he was arrested he could implicate Candy Mayet. He could implicate Bobby Kelly. He could implicate Bruce Roth who you will recall the agents staged a mock arrest of and who Harry didn't know was an informer. He could implicate Mike Lorber who he knew as Mike Molina. You remember Harry also used a phony last name, Harry Sharp. Harry didn't know that Mike was a government informant. He could implicate Susan Marcus. With all these people to implicate already, with all these cases to make, why would he just make up a story about Maria?

The question contains the answer, ladies and gentlemen. Harry didn't make up the story any more than he made up the pocketbook or the keys which fit into Maria Aguilar's mailbox.

Then, ladies and gentlemen, there was the testimony of the agents, Agents Korniloff, Hall and Sullivan. The testimony of the agents to whom Mayet had told untruths on the day of his arrest. The testimony of the agents whose job and very function it is to make surveillances for undercover purposes. And who saw Candy Mayet pacing back and forth on the corner of 43rd and Eleventh by the Market Diner and who saw the same Candy Mayet who had warned Harry Shapiro to look out for cops, look straight in their direction and then

promptly hail a cab and get into it. And Agent Korniloff who took the keys from the same pocketbook the cocaine was in, who went to 615 Palisades Avenue in Cliffside, New Jersey, who spoke with the superintendent, Mr. Castillo, the Mr. Castillo who testified that Maria lived in Apartment 18, who, after speaking with Mr. Castillo went to the mailbox for Apartment 18, the mailbox which said "Aguilar" and who tried the key and found that the key in the pocketbook was the key to the mailbox.

Are the agents lying, ladies and gentlemen? Are the agents also not telling the truth? Then there was Assistant United States Attorney Nesland's testimony. He was actually called as a defense witness. But that was just a ploy, wasn't it, so that the defense could try to shake the testimony of the other witnesses. But what did he say? He explained how he spoke to the witnesses separately, a fact which the witnesses themselves confirmed. He stated how Harry Shapiro had told him on the morning following his arrest what had happened the preceding day and, ladies and gentlemen, when the suggestion is made that Harry Shapiro hadn't told the agents anything when he was arrested, do you remember the testimony that the agents brought him back from the men's room to the parking lot to the Squire Restaurant before going back to their office? Did you just figure that out, let's go to the Squire

Restaurant? Harry Shapiro never spoke to them on the day he was arrested, no.

Let us come now to the testimony of Mr. Mayet himself. He says that he told Harry Shapiro to go in to Brooklyn to make deliveries, but that Harry Shapiro didn't take anything with him into New York to deliver. That the only thing Shapiro was carrying was a pocketbook which happened to have women's personal articles in it, which happened to have Maria Aguilar's keys in it, and he didn't even suggest to Harry that perhaps it was inappropriate for his shoe salesman to be carrying a pocketbook when he made deliveries to customers in Brooklyn.

They drove in to New York in the mid-afternoon. Mayet had two stops to make, he said, at his father's store to get money and at the lumber store. Maria, he says, had to go somewhere else to buy leather. Yet they went with Harry, parked at 1411 Broadway and never asked Harry who he was going to see or what it was about. They went up to the 17th floor, he says, and he remembers Harry returning with the friend. But he doesn't remember anything about Harry's friend Bruce. He doesn't remember Bruce saying that they had to meet his partner at the Squire Luncheonette. That would mean knowledge. Knowledge about a cocaine deal. So instead he says that he and Maria told Harry they were getting something to eat. There

was no explanation at all about how Harry and Bruce would even know which restaurant to find them at. He says he didn't know anything at all about a telephone call outside the Squire Luncheonette. He just remembers giving his card to Maria so that he, Candy, could take a cab with Harry and a man he didn't know to a place he didn't know for a reason he didn't know or ask about in the late afternoon of a warm July day when he still had to stop at his father's business for money and at a lumber store for wood.

He says he stayed at the corner because his employee, Harry, told him to stay there. That he waited five minutes and when they didn't come back he didn't go inside to look for them, no, he just left in a cab.

This man who was in such a rush that he gave his car away to Maria and who had stopped for something to eat in the luncheonette didn't even bother to look inside the Market Diner. He didn't look across the street and see the federal agents in the car in the gas station. He just paced back and forth, didn't go into the diner to look for his companions, and then hopped in a cab. Then he says that he went to his father's for money.

Ladies and gentlemen, I leave it to you to determine how much you wish to credit the testimony of Mr. Mayet, Sr. Do you believe that a businessman who has an accounting firm

in Manhattan and who owns two stores and has been in this country eleven years doesn't understand a word of English and why, ladies and gentlemen, if I asked him if he understood what Mr. Stone had said to the Judge, why he answered the question before it was even translated for him. But if, ladies and gentlemen, if Candy Mayet did go to his father's store after warning Harry to watch out for a cop and after seeing those surveillance agents across the street, and if he told his father he needed money for lumber, then I submit that the evidence establishes that he deceived his own father. Because what he wanted that money for was to pay off Harry Shapiro, get him a lawyer, just as he told Bobby Kelly that night so long as Harry didn't implicate him.

Then where did Mayet go, to buy lumber? He says he took a bus back from the Port Authority, having given his car away a little earlier. And why the following day when he was arrested did Mayet tell the agents he hadn't been in New York City? He hadn't been at the corner by the Market Diner? And why on July 11, the day after he was arrested, did he tell the Assistant United States Attorney that he hadn't been near the Market Diner and that he had last seen Harry Shapiro at the Puma Shoe Store on the preceding Monday, July 9? And why did he tell the Assistant United States Attorney that it was he, Candy Mayet, not Harry Shapiro, who had gone to Brooklyn to

make deliveries to a customer on July 9?

Ladies and gentlemen, was it because after twelve years and all his adult life in this country he was terrified of policemen? Was he also afraid of the Assistant United States Attorney, of the magistrate, or was he simply afraid of the prospect of being convicted of the crimes he had committed?

Ladies and gentlemen, now we come to the other defendant, Marie Aguilar. Mr. Willis asks why is Maria even here. Well, she is here, ladies and gentlemen, because, as the evidence demonstrates, on July 9, 1973 she had a telephone conversation with Harry Shapiro. She told Harry Shapiro that she had four ounces of cocaine already together, that Harry needed only three ounces and so she brought the cocaine to the Puma Shoe Store. She supplied the cocaine for this deal just as she supplied the cocaine for Susan Marcus. She arrived at the store in the afternoon. Harry Shapiro thought it was a few minutes before Candy came back. Mayet testified it was a few minutes after he got there. In any event, if she worked at the store five, six days a week from 9 to 5, why wasn't she at the store in the morning already? And after she arrived, Harry asked her if she had the package and she said yes. And after she arrived and after her private conversation with Mayet in the back room, they emerge and lo and

behold, Mayet now has the package in his pocket.

And in the car with Mayet in the driver's seat and Maria in the front, Mayet removes the package and in the clear view of Harry Shapiro puts it into Maria Aguilar's pocketbook which is right between them. Harry Shapiro and Bruce Roth both testified that it is Marie Aguilar who held the pocketbook after that. She had it in the elevator on the way down from the showroom to the Squire Luncheonette. She had it in the luncheonette. She had it as she stood off to the side while the others go to the phone booth for Bruce to call his partner. It is only after the phone call, after Harry tells Candy that the deal will take place at the Market Diner, after Candy Mayet and Marie Aguilar confer privately on the sidewalk, that she goes to get the car and hands Candy Mayet the pocketbook.

Is that Harry Shapiro's pocketbook? With the women's articles, the hair brushes, the bracelet, the stocking, the keys, her keys, Marie Aguilar's keys? Why does she give Candy Mayet the pocketbook? Why? Because she knows the cocaine that she herself had brought to the Puma Shoe Store that morning is in the pocketbook. Why else would she hand Mayet the pocketbook? Why else, if she didn't know the sale was going ahead. If Harry had taken Maria's pocketbook back at the store, as the defense suggests, if Harry had taken the

pocketbook at the store, why didn't she ask for it back in the car? Candy Mayet says he saw Harry with the pocketbook in the car. Ladies and gentlemen, the pocketbook, the keys, Marie Aguilar cannot get around the facts. The phone conversation with Harry in the morning, she was there with Harry Shapiro. She was there with Bruce Roth. She was there with the cocaine in her pocketbook. There is no getting around the facts.

Why is Marie Aguilar here today, Mr. Willis asked. She is here because she was a participant in a conspiracy to sell and distribute cocaine and she is here because on July 9, 1973 she distributed or possessed with intent to distribute three ounces of cocaine or, at the very minimum, she aided and abetted Candy Mayet and Harry Shapiro in the commission of that crime. And that is why she is here, ladies and gentlemen, the evidence so establishes.

Now, ladies and gentlemen, a few final remarks, if I might. Counsel point to certain inconsistencies as to some of the details or the testimony. In the testimony and recollections of various witnesses, that is. Some of the inconsistencies, I would suggest, simply do not exist but rather are the product of counsel's own faulty recollections as to the testimony.

MR. STONE: I object to this part of the summation.

THE COURT: Mr. Reporter, will you read it back.

MR. WILLIS: I want to object to a misstatement of fact in summation concerning certain remarks made.

(Statement read.)

THE COURT: I don't think that is objectionable.

I will tell the jury, and repeat it later in my instructions, what Mr. Buchwald says as to the evidence is not controlling. What Mr. Stone says as to the evidence or Mr. Willis or what I may say as to the evidence is not controlling. It is what the jury recollects and Mr. Buchwald can argue that his recollection is correct and yours is incorrect. I leave it to the jury to decide. Certainly I can't decide.

Go ahead.

MR. BUCHWALD: But there are certainly some inconsistencies. This isn't the Radio City Music Hall with the Rockettes where everybody does a dance in step. This is a court of law and here there are the normal difficulties with respect to detailed recollections of events long past. Difficulties by people who don't carry notebooks and diaries around with them as to the time of day when things occurred or dates or the order of events. But while there may be inconsistencies as to certain of the unimportant details as to the basic events, there is no inconsistency as to Mayet's first discussions with Harry Shapiro, recruiting Harry Shapiro to be his

cocaine salesman as well as shoe salesman, as to the sample, as to the price list, as to the Susan Marcus purchase, as to the major events of July 9. Counsel suggests that Harry Shapiro must have had his own cocaine because Michael Lorber thought that he, Harry, was ready to do the deal right away. What Harry Shapiro was ready to do, as his testimony made clear, was to come down to the showroom and meet Mike's partner and size him up as soon as possible. Because when Harry did finally go down to the showroom for the first time and met Susan Marcus, he didn't have the cocaine with him, did he? Not even a quarter ounce. He had to bring her back to Candy in New Jersey. So much again for the Harry Shapiro did it alone theory.

Ladies and gentlemen, counsel ask why aren't there fingerprints? Every defendant who has ever been convicted has been dissatisfied with the evidence against him. If there were two witnesses, why weren't there three, if there were three witnesses --

MR. STONE: I certainly object to that. We are not concerned with any other defendant in any case as to what any other defendant said.

THE COURT: I will sustain that.

MR. BUCHWALD: Ladies and gentlemen, I would urge you to focus on the evidence that is here, on the overwhelming evidence that is here, no matter how much defendants might wish

you to dwell on other factors.

Ladies and gentlemen, I don't know if I have reviewed each and every piece of evidence with you. I don't know if I have batted down all the smokescreens or cleared away all the particles of dust that were thrown in the air. I have tried to be thorough but in the final analysis it is your recollection of the evidence and your recollection alone which governs. I am certain you will pay careful attention to his Honor as he instructs you on the law in the case. I know you will listen carefully to all of his Honor's instructions. I ask you to pay particular attention to his Honor's instructions on aiding and abetting a crime and what it means to aid and abet.

The task before you, ladies and gentlemen, is the serious one of determining the guilt or innocence of these two defendants on the crimes charged and without for one moment wishing to underestimate the seriousness of the task before you, the evidence itself makes your task less than difficult. Were Candido Mayet and Marie Aguilar participants in a conspiracy to sell and distribute cocaine? Yes, they were. Did Mayet and Aguilar on July 9, 1973 distribute or possess with intent to distribute three ounces of cocaine or aid and abet in the commission of that crime? Yes, they did. The evidence is there. It is powerful and it is overwhelming,

and it proves the guilt of these two defendants on both charges in the indictment beyond any reasonable doubt.

Thank you.

THE COURT: Madam Foreman and ladies and gentlemen of the jury, we have had a long morning and I hope you don't feel I am overtaxing your patience. I think it much better if I complete my instructions before lunch and then I will ask the marshals to take the jury for lunch in a body, and when you come back from lunch you can begin your deliberations.

(Pause.)

United States of America
v.
Candido Mayet and
Marie Aguilar a/k/a Maria

73 Cr 702

New York, December 11, 1973

Present:

For the Government:

Don D. Buchwald, Esq.
Michael B. Mukasey, Esq.,
Assistant United States Attorneys

For Defendant Mayet

Joseph I. Stone, Esq.

For Defendant Aguilar

Peter Willis, Esq.

- - -

CHARGE OF THE COURT

(Wyatt, J.)

THE COURT: Madam Foreman, ladies and gentlemen of the jury, this case is now about to be submitted to you for your decision as jurors on the issues of fact here involved and, of course, your decision on those issues determines whether your verdict is guilty or not guilty.

In making your decision you act as ministers of justice and you discharge an obligation of citizenship which it is not too much to call sacred. In making your decisions you are to act fairly and impartially. You

are to appraise the evidence calmly and objectively and without any bias or prejudice for or against the government or for or against these defendants. You are the sole and exclusive judges of the facts.

As I said a moment ago it is your recollection which controls and nothing that counsel has said and nothing that I may say during these instructions is to take the place of your own recollection which is alone what controls.

In giving these instructions bear in mind that I am explaining the applicable law. Jurors decide issues of fact. Your duty is to take my instructions as to the law and apply it to the facts as you may find those facts to be.

That from time to time during the trial I may have been required to make rulings on the admissibility of evidence or otherwise is not to be taken as any indication of any view by me as to what your decision should be as to the guilt or innocence of these defendants. You are not to assume that I have any opinion as to the guilt or innocence of these defendants or as to the truth or falsity of any of the charges. The rulings on objections and other rulings during the trial are matters of law with which the jury has no concern.

In this connection, members of the jury, the fact that objections were made by counsel from time to time is not to give rise to any inference because counsel not only have the right but counsel have the legal duty to press whatever legal objections there may be to the admissibility of evidence and also to make any other objections or requests which they deem in the interest of their client.

I would remind the jury also that what is said between the Court and counsel the jury should disregard. You must remember in this connection that Judges are only human. I may have seemed or may have been impatient from time to time. If so, it is a fault on my part. If I have seemed or in fact have been impatient with counsel at any time you are asked to forgive and to disregard it.

Counsel on both sides have been able and devoted and their zeal on behalf of their respective clients is commendable.

I would also remind the jury that from time to time when I may have asked a question of one witness or another this was only to make clear, to point out some clarification or attempt to do so in the testimony. Certainly my questions should not be taken as any indication of any opinion by me as to the guilt or innocence

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of these defendants or as to the credibility of any witness.

Members of the jury, in these instructions I will have occasion frequently to use personal pronouns and I will generally try to say he and she or him and her but if I should say simply he you must understand that that is intended to include she and if I say simply him that is intended to include her as well.

The indictment in this case contains two counts and names four defendants. Of these four only two, Candido Mayet and Marie Aguilar are on trial before you. They are the only persons whose guilt or innocence you must announce in your verdict. Although in determining or in considering this guilt or innocence you may have to determine the nature of the participation, if any, of others. In the determination of guilt or innocence you must bear in mind that guilt is personal. The guilt or innocence of the defendants on trial before you must be determined separately with respect to them solely on the evidence presented against them or the lack of evidence. And as between the two defendants each must be considered separately by the jury. The case of a defendant stands or falls upon the proof or lack of proof of the charge against him or her and not against somebody else.

Therefore, the fact that other persons named in the indictment have pleaded guilty is not evidence of the guilt of any other defendant or that the crimes charged were in fact committed.

The indictment, as I think I have said several times before, is merely an accusation. It is a charge. It is not evidence and no proof of the guilt of the defendants. You will not give any weight whatever to the fact that an indictment has been returned against the defendants. They have pleaded not guilty.

The fact also that the government is a party and that the prosecution is brought in the name of the United States of America does not entitle the government or its witnesses to any greater consideration than that accorded the witnesses for any other party.

At the same time the government and its witnesses are entitled to no less consideration. All parties, government and individuals alike, stand as equals before this bar of justice.

The government has the burden of proving the charges against these defendants beyond a reasonable doubt. It is aburden which never shifts and it remains upon the government throughout the entire trial. A defendant is presumed to be innocent. He or she does not have

any burden of proof. They do not have to prove their innocence. The presumption of innocence disappears only if and when you, the jury, are satisfied that the government has sustained its burden of proof that the guilt of the defendants has been proved beyond a reasonable doubt.

In weighing the evidence to determine whether there has been such proof you will consider the quality and the substance of the evidence and not the quantity or the number of witnesses. Now I should give the jury some assistance as to this term reasonable doubt. It is a doubt founded on reason and arising from the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which is substantial and not shadowy. Reasonable doubt is one which appeals to your judgment, your reason, your common sense, your experience. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. A reasonable doubt is not a vague, imaginative, speculative doubt but such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or beyond all possible doubt. If that were the rule few men or women, however

guilty, would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty.

In consequence, the law in a criminal case is that it is sufficient that the guilt of a defendant be proved beyond a reasonable doubt and not beyond all possible doubt.

Members of the jury, the indictment charges the defendants with two separate offenses under the Comprehensive Drug Abuse Prevention and Control Act of 1970. This act was passed by Congress because of a concern among other things with the illegal distribution of narcotic drugs which have a substantial and a detrimental impact on the health and welfare of our people.

The part of this act which is specifically applicable here is called the Controlled Substances Act. It is not necessary for you to remember the names of these acts or the numbers of the sections which are applicable.

It is sufficient if you remember what conduct the acts forbade and the essential elements of the offenses here charged. The term controlled substance is used in the acts to refer to any drug contained in one of the five schedules contained in the Controlled Substances

Act. Cocaine is a derivative of cocoa leaves and is a narcotic drug included in Schedule 2 of the Controlled Substances Act. Cocaine is thus, as a matter of law, a controlled substance.

Now among other things it is made unlawful for any person knowingly and intentionally to distribute or to possess with intent to distribute any controlled substance such as cocaine.

To distribute a controlled substance means to deliver it. That is, the actual constructive or attempted transfer of the substance.

The statute, as you have just heard me explain, also makes it unlawful to possess with intent to distribute any controlled substance such as cocaine. Possess is the term used in the statute. This may be of two types, actual or constructive.

Actual possession means that a person, a defendant, knowingly has personal, manual or physical control of the drug.

Constructive possession means that although the drug is in the physical possession of another person a defendant knowingly has the power to excercise control over that drug or over its distribution or to set the price for its sale or to cause its delivery.

Either type of possession, actual or constructive, may be proved by direct evidence or by circumstantial evidence or by a combination of both.

Members of the jury, the second count charges the defendants here on trial and Shapiro with distributing and possessing with intent to distribute cocaine in violation of the laws just mentioned.

The first count charges the four defendants with a conspiracy to violate those laws. A conspiracy which is sometimes called a partnership in crime because it involves collective or organized action presents a greater potential threat to the public interest than the illicit activity of a single wrongdoer.

Group association or organized activity renders detection more difficult than in the instance of a single individual. For this and other reasons Congress has enacted a special law which provides that any person who conspires to violate the Controlled Substances Act is guilty of a separate offense. There are two counts in the indictment here. They charge the defendants with two separate offenses and the word count, as I believe I explained earlier, simply means a section of an indictment charging a separate offense, one offense.

It is required that each separate offense be

charged in a separate count or section of the indictment. The first count charges a conspiracy, that is an agreement to violate the law. The second count charges the defendants committed an actual violation of a law which they are charged in the first count with conspiring to violate. The second count is what is often called, as a term in law, but you should know it, a substantive count. A substantive count as opposed to a conspiracy or an agreement count.

I believe it may be more helpful to the jury if we take up the substantive count, the second count, first.

Now I read the second count of the indictment: "The grand jury further charges on or about the 9th day of July 1973 in the Southern District of New York Candido Mayet, Harry Shapiro and Marie Aguilar, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a scheduled 2 narcotic drug controlled substance, to wit, approximately 80 and 6300 grams of cocaine hydrochloride."

That is the charge. The defendants have pleaded not guilty to the count, to both counts of the indictment and that forms the issue to be tried here.

To establish the charge in this second count the government must satisfy you beyond a reasonable doubt

of these essential elements: First, that a defendant distributed or possessed with intent to distribute cocaine. Second, that he or she did so knowingly and intentionally. I have already explained to you the meaning of the terms to distribute and possess. To do an act intentionally means to do it voluntarily, purposely and deliberately, aware of the doing of the fact and not by inadvertence, negligence, mistake or some other innocent reason.

While there does not appear to be any dispute about it and it was stipulated that a government chemist would testify that Exhibit 1-B, the relevant container in evidence, did contain cocaine, you must find as a part of the essential elements under the second count that the material found in Exhibit 1-B was in fact cocaine and if you so find you must also, of course, for a conviction on this count, find the other essential elements as just explained.

Madam Foreman and ladies and gentlemen of the jury, we turn to the first count, the conspiracy count. I now will read you that count:

"The grand jury charges from on or about the first day of May 1973 and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York" -- and I think the in-

dictment was filed on July 19th of this year -- Candido Mayet, Harry Shapiro, Robert Kelly and Marie Aguilar, the defendants, and others to the grand jury unknown lawfully, intentionally and knowingly, conspired, confederated and agreed together and with each other to violate" -- and then there are named sections of the United States Code. "2, it was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule 2 narcotic drug controlled substances, the exact amount thereof being to the grand jury unknown in violation of" -- the same sections cited by number of the United States Code. "Overt Acts."

I will explain that term in a few minutes.

"In pursuance of the said conspiracy and to effect the objects thereof the following overt acts were committed in the Southern District of New York: One, on or about July 8, 1973 defendant Harry Shapiro had a conversation with another about the sale of cocaine.

"Two, on or about July 9, 1973 defendants Candido Mayet, Harry Shapiro and Marie Aguilar met with another at 1411 Broadway, New York, New York.

"Three, on or about July 9, 1973 defendant Harry Shapiro delivered cocaine to another."

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Again, the defendants have pleaded not guilty to this first count also and that forms the issue to be tried here as to the first count.

In order to convict a defendant on this first count the government must prove beyond a reasonable doubt the following essential elements: One, the existence of the conspiracy as charged in the indictment. Two, that the defendant knowingly associated himself or herself with the conspiracy. That is, you must treat the case of each defendant separately determining whether that defendant knowingly associated himself or herself with the conspiracy. Three, that one of the conspirators knowingly committed in the Southern District of New York, that is so far as this case is concerned the Island of Manhattan, that is New York County, at least one overt act at or about the time and place alleged in the indictment.

It is not required that the government prove that a conspiracy started and ended on the dates alleged in the indictment. It is sufficient if you find that in fact a conspiracy was formed and exercised for some time within that period and that at least one overt act was committed in that period in furtherance of the conspiracy.

The offense of conspiracy, members of the jury, is complete when the unlawful agreement is made and any

single overt act is thereafter knowingly commited by at least one of the co-conspirators.

Now you ask what is a conspiracy.

It is a combination or an agreement of two or more persons by concerted action to accomplish a criminal or unlawful purpose. As charged in this first count, to distribute or possess with intent to distribute a narcotic drug, namely cocaine.

It is not necessary for the government to prove both of the illegal objects of the conspiracy which are alleged in the first count. It is sufficient if the government proves either of these two objects. That is, to distribute drugs or to possess with intent to distribute.

The gist of the crime of conspiracy is an unlawful combination or agreement to violate the law. Whether or not the conspirators accomplish what it is they allegedly conspired to do is immaterial to the question of their guilt or innocence of the charge of conspiracy. In other words, the success of the conspiracy need not be proven. But in this instance the government contends that the conspiracy was at least in part successful. The defendants deny that they had any part in any conspiracy.

A conspiracy has sometimes been called a partnership in crime, a partnership in criminal purpose in which

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each member becomes the agent of every other member. To establish a conspiracy the government is not required to show tnat two or more persons sat down around a table and entered into a solemn compact orally or in writing stating that they had formed a conspiracy, setting forth the details of the plan, setting forth the part each was to play. It would be most extraordinary if there were ever any such agreement.

Your common sense will tell you that when men or women are both in fact undertaking to enter into a criminal agreement much is left to unexpressed understanding. From its very nature a conspiracy is almost invariably secret in its origin and secret in its execution. It is sufficient if two or more persons in any manner through any contrivance, impliedly or tacitly, come to an understanding in common to violate the law.

Express language or specific words are not required to indicate assent or attachment to a conspiracy.

In determining whether there has been an unlawful agreement you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose. Usually the only evidence available is that of disconnected acts which acts when taken together in connection with each other show a

conspiracy or agreement to secure a particular result as satisfactorily and as conclusively as more direct proof.

If, for example, several persons gathered together and shortly thereafter there was concerted action among them with each of them doing something related with activities of the others, all of which contributed in the same or similar manner toward the accomplishment of the same unlawful objective, such evidence would support the inference that those persons had conspired to accomplish that purpose.

If you do conclude that a conspiracy as charged in this first count did exist you must next determine whether each defendant on trial was a member of the conspiracy. That is, whether he or she knowingly associated himself or herself with the conspiracy. In making this determination you should examine and consider all of the evidence relating to the first count.

I dealt in connection with the second count with the expression knowingly and the expression intentionally. I repeat that to do an act knowingly and intentionally means to do an act voluntarily and not because of mistake or negligence or inadvertence or accident or some other innocent reason.

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Members of the jury, mere association of a defendant with an alleged conspirator, another defendant or otherwise, or even a mere knowledge of the conspiracy does not alone establish his or her participation in the conspiracy if you find that in fact a conspiracy did exist. In determining whether a defendant was a member of the conspiracy you are to consider whether in some sense he or she promoted the venture, made it his or her own. And the acts and declarations of any person found by you to have been a member of the conspiracy made during its pendency and in furtherance of its objectives are considered the acts and declarations of all other members even though they might not be present. If there was in fact a partnership in crime then any act, statement or declaration of one partner in furtherance of the partnership purpose becomes the act and statement of all the other partners even though, as I just said they may not have been present.

Nowwe come to the term overt act. As I have told you, there must be proof of at least one overt act for a conviction under the first count. An overt act is any step, action or conduct which is taken to achieve, accomplish or further the object of theconspiracy.

I think it may be helpful to the jury if I were

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to refer to the reason why Congress has required the commission of at least one overt act. The purpose of requiring proof of at least one overt act is that while parties might conspire and agree to violate the law they might change their minds before taking any step to accomplish their purpose. If they change their minds and do nothing to accomplish the agreement then it would not constitute an offense.

Now the overt act need be neither itself a criminal act nor the very crime which is the object of the conspiracy. Indeed, an overt act can be an entirely innocent act. But if it is an act to further, to accomplish, the object of the conspiracy then it is an overt act, as that term is used in the law.

Members of the jury, the guilt of a conspirator is not governed by the extent or duration of his or her participation in the conspiracy or whether he or she had knowledge of all the conspirators or all the operations. Some conspirators play major parts and others play minor parts. Even if one conspirator joined the conspiracy after it was formed and was engaged to a degree more limited than that of other conspirators, he or she is equally culpable so long as you find that he or she was a member of the conspiracy. In a word, it is not required that

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a person be a member of the conspiracy from the start. He or she may join it at any point during its progress and be held responsible for all that went on before the joining and all that may be done thereafter so long as he or she remains a member of the conspiracy.

Now intent involves a person's state of mind and while this is a fact it is a fact which it is impossible to prove by direct evidence short of an express admission by a defendant. Like any other fact, intent may be proved by circumstantial evidence and proof of the circumstances surrounding a given transaction may supply an adequate and convincing basis for finding the intent of a defendant. Having explained the charge of conspiracy, let us return for just a moment to the second count of the indictment which you remember is a substantive count. The government is not required to prove that a defendant individually committed the substantive offense if you find that that defendant was a member of the conspiracy charged in the first count and that another conspirator committed the substantive offense in furtherance of the conspiracy.

Thus, for example, and purely by way of example, if A, B and C conspired and agreed to sell cocaine and thereafter in carrying out the conspiracy C sold

cocaine, A and B are equally guilty of the substantive offense, equally with C.

A conspiracy, members of the jury, once formed is presumed to have continued until its objectives are accomplished or there is an affirmative act of termination by its members or it is otherwise terminated as, for instance, by an arrest. So too once a person is found to be a member of a conspiracy such person is presumed to continue the membership until its termination unless there is an affirmative proof of withdrawal or disassociation.

With respect to the second count, the substantive count, the government also relies on a section of the United States Code which in relevant part reads as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

This means that not only is the person who commits an illegal act, the person usually called a principal, guilty, but anyone who aids and abets in the commission of the act is likewise guilty of commiting that illegal act.

In order to find that a defendant aided or

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abetted another to commit the offenses charged you must find that the defendant in some way associated himself or herself with the criminal venture; that he participated in it as something he wished to bring about; that by his act or acts he endeavored to make it succeed.

In determining this question you may consider whether a defendant had a stake in the venture since financial interest in the outcome of a crime is significant as to motive. This participation by a defendant may be shown by any act designed to promote or further the crime even of relatively slight importance which you find was committed by a defendant. But to find a defendant guilty of aiding and abetting you must find something more than mere knowledge that the crime was being committed since a mere spectator at a crime is not a participant.

It is not necessary, however, to find that he himself did any of the acts since participation in the crime can, for example, be found if you find that he counselled another person to commit the crime.

Members of the jury, we consider now the credibility of witnesses. In weighing and determining the credibility of witnesses you rely on your experience in the ordinary walks of life. You draw as practical men and women on your past experience. You take into account

any inconsistencies, contradictions, conflicts in the testimony of other witnesses, omissions, conflicts of prior testimony and the like. If you should find that any witness has testified falsely as to any material fact you may reject the whole of the testimony of that witness or you may accept such part as you do believe or you may find corroborated by other evidence in the case.

You may consider whether a witness has any interest in the case or motive which might affect the testimony.

You may consider this interest in weighing the testimony. An interested or motivated witness is not necessarily unworthy of belief. It is only a fact to be considered by the jury in determining what weight to give the testimony.

Members of the jury, the law permits but does not require a defendant to testify in his own behalf. Mr. Mayet has taken this witness stand and has testified. Obviously a defendant has a deep personal interest in his prosecution. In fact, it seems clear that he has the greatest interest of all. Interest creates a motive for false testimony. The greater the interest the stronger the motive and the interest of a defendant in the result

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of his trial is of a character possessed by no other witness. In appraising his credibility, therefore, you may take the fact of interest into consideration. However, it by no means follows that simply because a person has a vital interest in the result that he is not capable of telling a straightforward or truthful account of events. It is for you to decide to what extent, if at all, his interest has affected or colored his testimony. Evidence that a witness has one or more previous convictions, criminal convictions, may be considered by the jury in weighing the credibility of the witness. That a person has such a conviction does not mean that such witness cannot tell the truth. It is simply a factor for the jury to consider in determining credibility.

Mr. Mayet called witnesses who testified to his reputation in the community for truth and veracity. These are often called character witnesses. Although you appreciate that they are testifying to reputation rather than character. You should consider the evidence of reputation for a trait of character such as truth and veracity together with all the other evidence in determining the guilt or innocence of Mr. Mayet. Evidence of good reputation may in itself create a reasonable doubt where without such evidence there would be no reasonable

doubt. But if from all the evidence you are satisfied that Mr. Mayet is guilty a showing that he previously enjoyed a good reputation for truth and veracity is no excuse or defense and you should not acquit him merely because you believe that he has been a person of good repute in this respect.

Miss Aguilar has not testified. The law does not compel a defendant in a criminal case to take the stand and testify. No presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify.

The government offered evidence of statements made by Mr. Mayet after his arrest and which the government contends were false. This evidence was admitted only against Mr. Mayet and must not be considered against Miss Aguilar.

If a defendant after being arrested or after being accused of a crime makes some statement or some explanation which you find to be false then you may consider as against him whether this is circumstantial evidence pointing to a consciousness of guilt. It may be a reasonable inference that an innocent person does not invent or fabricate to establish his innocence. What significance if any to attach to such conduct, if you

find that there was such conduct in this case is of course entirely for the jury.

Now, members of the jury, two kinds of evidence, direct and circumstantial. Direct evidence is where a witness testifies to what he or she does. What he knows of his own knowledge, something which came to him by virtue of his senses, what he saw or heard.

Circumstantial evidence is evidence of facts from which one may infer connected facts which reasonably follow in the common experience of mankind. Perhaps I can use a simple example. You recall in the old story of Robinson Crusoe how one day he saw footprints in the sand on the beach. He did not see a man walking on the beach but he immediately drew an inference from the fact of the footprints that a man had in fact been walking on the beach. That is about all there is to circumstantial evidence.

You infer on the basis of reason and experience from an established fact the existence of some further fact.

Now, members of the jury, there is no inference to be drawn against a party from the failure of that party to call a witness when it appears that his testimony would be merely cumulative or repetitious and of no

greater value than that of witnesses who have in fact testified.

The government called witnesses Harry Shapiro, Robert Kelly and Susan Marcus who openly admitted their involvement in the offenses here charged and their wrongdoing. In the eyes of the law they are accomplices in the same offenses charged against these defendants here on trial.

In the prosecution and detection of crime the government, of necessity, is frequently compelled to rely upon the testimony of accomplices or of persons with criminal records. Often it has no choice in the matter. The government must take the witnesses to a transaction as they are. An accomplice does not become incompetent as a witness because of participation in the criminal act charged. If accomplices could not be used in many instances it would be difficult to detect and prosecute wrongdoers and this is especially so in cases of conspiracy transactions. Frequently it happens that only those who participated have evidence which is relevant and important in the case if a prosecution is to succeed. The fact that a government witness is an accomplice may be considered by you as bearing upon his or her credibility. However, it does not follow that because a person has

acknowledged participation in a crime or is an accomplice, that he or she is not capable of giving a truthful version of what occurred. His or her testimony, however, should be viewed with great caution and scrutinized carefully. You will consider whether the testimony was inspired by any motive of self-interest, personal advantage or hostility to a defendant. You will consider whether the testimony was a fabrication induced by belief, for example, that the witness would receive favorable consideration on sentencing for offenses to which there was a guilty plea. Or you will consider whether the accomplices bared themselves publicly before you, made a clean breast of their wrongdoing and told the truth.

In short, did they decide after being caught to come clean and tell the truth? If you find that the testimony of an accomplice was deliberately untruthful you should reject it.

On the other hand, if upon a cautious and careful examination you are satisfied that the witness has given a truthful version and that the government has sustained its burden of proof then you have sufficient proof upon which to bring in a verdict of guilty. There has been testimony as to the use by the narcotic agents of the services of Lorber and Roth as informants.

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Whatever you may think of informers, whatever I may think of informers, the government uses them in order to get leads to those who are violating the law.

Whether you and I disapprove of that is really beside the point. The use of informers is not forbidden by law. You are not being asked to determine whether or not you agree with the policy of using informers.

Now, members of the jury, you will be glad to realize that we are coming to the conclusion of these instructions for the length of which I apologize and for holding you beyond your lunch hour but I think it better to do it this way even so.

I say to you that each of you jurors is entitled to his or her own opinion. You should, however, exchange views among yourselves each with your fellow jurors. That is the very purpose of jury deliberation, to discuss and consider the evidence, to listen to the arguments of fellow jurors, to consult with one another and to reach an agreement based solely and wholly on the evidence if you can do so without violence to your own individual judgment.

Each one must decide the case for himself or herself. But you should not hesitate to change an opinion which after discussion with your fellow jurors

appears to be mistaken in the light of the discussion viewed against the evidence and the law. You are not to yield your conviction, however, simply because you were out-numbered or out-weighed. Your final vote must reflect your conscientious conviction as to how the case should be decided.

Members of the jury, any verdict must be unanimous. That is as to each defendant and on each count the verdict must be unanimous. The jury is not to consider or in any way to speculate as to the punishment which a defendant may receive if he or she is found guilty.

Under your oath as jurors you cannot allow a consideration of the punishment which may be imposed upon a defendant if he or she is convicted to influence your verdict in any way or in any sense to enter into your deliberations.

The function of a jury is to determine the guilt or innocence of a defendant on the basis of the evidence and these instructions. It is the Judge alone, the Court, who has the duty of determining the sentence if there is a conviction.

The charges here, ladies and gentlemen, are most serious. The just determination of this case is important to the public and it is equally important to each of

these defendants. Under your oath as jurors you must decide this case without fear or favor and solely as I have said in accordance with the evidence and the law.

If the government has failed to carry out its burden as to any count or counts as to a defendant your sworn duty is to bring in a verdict of not guilty as to such count or counts.

If the government has carried its burden as to any count or counts against the defendant you must not flinch from your sworn duty but you must bring in a verdict of guilty on such count or counts.

The case of each defendant must be considered separately as if he or she were alone on trial. Thus there are various possible verdicts. You may find each defendant not guilty. You may find each guilty or you may find one not guilty and the other guilty as the case may be. Or you may find a defendant guilty on one count and not guilty on the other count.

I am not suggesting any of these alternatives to you, I am merely trying to make it crystal clear that you must consider the guilt or innocence of each defendant separately and that each count of the indictment must be considered separately as to each defendant.

Madam Foreman, I am giving you a copy of the

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indictment for the convenient use of the jury during its deliberations. I repeat, the indictment is not evidence. It is simply the charge, the accusation.

I am also giving Madam Foreman a form to be used simply as a guide for returning your verdict on each count as to each defendant. This form is not to be signed. It is only for your convenient use. Your verdict will be returned orally by Madam Foreman in open court and it goes without saying that this form is not intended to nor should it in any way influence your verdict.

If during your deliberations you wish to see any of the exhibits, Madam Foreman should send out a note by the marshal and we will send in the requested exhibits to you.

Likewise, if you should wish any testimony read to you Madam Foreman likewise should send out a request through the marshal and your request will be considered and if granted arrangements will be made.

Now we have reached that part of the trial where we must excuse our alternate juror, Miss Ettinger. I hope you realize that although we must excuse you now in our practice, you have served as effectively and as faithfully as if you were a member of the 12. Indeed, you have seen even this morning we were obliged to use an alternate juror and if we didn't have an alternate juror we

would have to try the whole thing over again.

We excuse you with the thanks of the Court.

You may retire.

Ladies and gentlemen of the jury, please be patient for just a few minutes in silence while I see counsel with the reporter at the side bar for any final problems of law.

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(At the side bar.)

MR. BUCHWALD: I have no exceptions, your Honor.

MR. STONE: I would have two requests as to corrections. One, you gave an example that if A, B and C were together and C committed an act that A and B would be responsible for that act.

THE COURT: That is Pinkerton.

MR. STONE: I think you should also charge if they are not members of the conspiracy they are not responsible for their act even though they are together and know each other.

Another request I would ask is that you continually referred to the fact that the verdict should be based on the evidence and it should also be based on the evidence or lack of evidence on any particular defendant.

THE COURT: I referred to that at least on one point in my charge. I won't change that.

MR. WILLIS: I will join in on Mr. Stone's first motion and I join him in the second, your Honor.

THE COURT: All right.

(In open court.)

THE COURT: Members of the jury, I refer briefly to the example that I gave you that if A, B, and C are members of the conspiracy and if C commits a substantive offense,

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such as possessing or distributing cocaine in furtherance of the conspiracy, that A and B would be equally guilty with C. Of course, it also stands to reason that if A and B and C are not members of a conspiracy, and A and B are not members of the conspiracy, the fact that C makes a sale of cocaine doesn't involve any responsibility on A and B.

The example I gave is premised entirely on a finding that A, B and C were members of a conspiracy.

Mr. Clerk, would you swear the marshals.

(Marshals sworm.)

THE COURT: Madam Foreman and ladies and gentlemen of the jury, again I am sorry for keeping you so long past your lunch hour. I will ask the marshals to take you immediately to lunch and you can deliberate as soon as you return from lunch.

You may retire.

(At 1:35 p.m., the jury went out to lunch.)

THE COURT: Mr. Clerk, will you mark the Government's request to charge as a Court exhibit.

(Court Exhibit 2 marked.)

THE COURT: Would you mark the memorandum for the jury verdict as a Court exhibit.

(Court Exhibit 3 marked.)

THE COURT: Would you give counsel a copy of this

memorandum.

All right. I should think we would be safe to go to lunch now. Even a long lunch, and then we will await the pleasure of the jury.

MR. STONE: Do you think the marshals will tell us where he is going so we can stay away from that place?

THE COURT: Ask him, Mr. Clerk.

MR. STONE: I am giving back Mr. Buchwald all the 3500 material and I will give to the clerk the portions of 3500 material that are already in evidence.

I have no objection. I don't know your procedure or practice if they want an exhibit giving it or not without calling attorneys down.

THE COURT: I don't like to do that, Mr. Stone. Sometimes there is a question about the note. If I once violate the principles I never know when to stop. I appreciate your confidence but I much prefer to do it with counsel present.

MR. STONE: Your Honor, in the line of a note, do you think one counsel can cover for both?

MR. WILLIS: I am a little in limbo. I am going to have to stick around the building for most of the day.

THE COURT: If you state on the record and it is all right with Mr. Mayer for Mr. Willis, in connection with a

note, to cover for you, it is all right with me.

MR. STONE: I think it would certainly, if it was a simple note, I could get something done. The 17th floor is urging that I finish something immediately.

MR. WILLIS: I will stay after lunch.

THE COURT: I will, too.

MR. STONE: I'll be five minutes away. If it is a simple note he can cover. If not, I can run right back.

THE COURT: We will permit Mr. Willis to cover for you, Mr. Stone, unless Mr. Willis thinks he has to get you.

MR. BUCHWALD: Is it your desire that we return to the courtroom after lunch, or can we wait in our rooms in the courtroom and leave a phone number?

THE COURT: I don't really know these details.

MR. WILLIS: Just as a suggestion, Mr. Stone is going to be in his office.

THE COURT: We won't call Mr. Stone.

MR. WILLIS: I am going to be here. Mr. Buchwald can't be that far.

MR. BUCHWALD: If I am not in the courtroom on the floor, I will be in my room.

THE COURT: But, Mr. Willis, I think you ought to either be in the courtroom or in the corridor because it is terribly difficult for us and for the staff if we can't get

counsel together and, of course, the defendants ought to be here. I like to deal with notes in the presence of the defendants.

MR. WILLIS: I am going to seek out an interesting trial to seek out.

THE COURT: We won't know where you are.

MR. WILLIS: I'll leave the information with the clerk.

THE COURT: The jury writes notes all the times and I have an idea that one of the jurors is going to want that bag.

MR. BUCHWALD: Might the record reflect that prior to the direct examination of Mr. Robert Kelly this morning there was turned over to defense counsel as 3500 material Item 3505-A, which is Mr. Kelly's grand jury testimony of July 18, 1973, consisting of seven pages.

(Luncheon recess.)

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AFTERNOON SESSION 2:50 p.m.

(At 2:50 p.m. the jury returned from lunch and commenced their deliberations.)

(3:10 p.m., a note was received from the jury.)

THE COURT: Mr. Willis, I notice that the defendants are not here. Do you have any idea where they are?

MR. WILLIS: I think they may be, only by way of the clerk, down at the Chesimard trial on the third floor. However, to expedite this matter, I would ask the Court to voluntarily, on my representation, that if it is merely a question of wanting a piece of evidence already marked in in the presence of the defendants, I would ask the Court to allow the jury such evidence in the absence of the defendant but counsel being present.

THE COURT: The note says, "May we please have the handbag and contents."

MR. BUCHWALD: This is Government Exhibit 3. Only the handbag itself was marked and admitted and the only contents that were admitted were the keys. It is my recollection that there has been testimony as to what the other contents were. I believe that came in the form of both cross-examination by Mr. Willis of Agent Korniloff and I believe that there was --

THE COURT: What was this dramatic effect that you

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produced or somebody produced by dumping all the contents in front of the witness?

MR. WILLIS: I don't believe that was me.

THE COURT: Who did it? All the contents were dumped out and somebody said, "Have you ever seen Shapiro with a bracelet?" and the bracelet was held up.

MR. WILLIS: That was not me.

MR. BUCHWALD: I believe that was me.

THE COURT: How were you able to use that which was not even in evidence? You mean because there was simply no objection?

MR. BUCHWALD: Yes, your Honor. The pocketbook was marked and I suppose at the time it was marked and entered there was some ambiguity as to whether the contents were included.

THE COURT: Just a sloppy way of proceeding.

What is in evidence then?

MR. WILLIS: The pocketbook and the keys, your Honor.

THE BUCHWALD: The pocketbook, the keys, the cocaine, the price list and the chemist's stipulation.

THE COURT: Am I correct it is just sloppiness?

MR. WILLIS: Yes.

THE COURT: It is just sloppiness, is that it?

MR. BUCHWALD: I would concur that that was not the

best way for us to proceed.

THE COURT: All right. Then the handbag is what exhibit?

MR. BUCHWALD: Government Exhibit 3, your Honor.

THE COURT: And the keys?

MR. BUCHWALD: 5, your Honor.

MR. WILLIS: Do they want the handbag and the keys, or just the handbag?

THE COURT: Handbag and contents. Weren't the contents displayed to the jury?

MR. WILLIS: There was, and I would object now. The only thing that I thought was relevant and was being marked into evidence was the handbag itself and specifically the keys that were taken out of the handbag. There may have been reference to a bracelet. I think I saw at one time a pair of stockings, other things in there, but it was never gone through. I am of the opinion that we are dealing with the pocketbook itself and the keys.

THE COURT: The jury wants to see the handbag and the contents and I can't send them anything which is not in evidence. I take it you both agree that nothing is in evidence but the handbag and the keys.

MR. WILLIS: Correct.

THE COURT: That is why this is such a lousy job,

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absolutely impossible to deal with. If I send them something which is not in evidence, then a conviction is reversed. On the other hand, although the contents have been freely displayed to the jury and testimony about it, apparently the contents are not in evidence.

MR. WILLIS: I apologize, but I didn't offer anything into evidence.

THE COURT: No, it is just sloppiness but that is the fate of mankind.

My note to them reads, "The handbag, Exhibit 3, and the keys therein, Exhibit 5, are sent herewith. The other contents, while displayed in court and testimony taken as to them,were not received in evidence and therefore may not be sent to the jury."

Do you have Exhibit 3 and 5?

MR. BUCHWALD: Yes, sir.

THE COURT: I have dictated the note and my reply to the reporter so even if we don't get it back it is now a matter of record.

(At 5:40 p.m., a note was received from the jury.)

THE COURT: We have a note, I am told.

It says, "We have reached a decision."

Would you mark this as a Court's exhibit and I'll put on my robe and we will get the jury.

(Court Exhibit 4 marked.)

THE COURT: Mr. Clerk, do you have a copy of the memorandum I gave the jury?

THE CLERK: Yes, I do.

THE COURT: Would you ask the marshals to bring in the jury.

(At 5:45 p.m. the jury returned to the courtroom.)

THE COURT: Mr. Clerk.

THE CLERK: Members of the jury, please answer to your presence as your name is called.

(Roll called.)

BY THE CLERK:

Q Madam Foreman, has the jury agreed upon a verdict?

A Yes.

Q How do you find as to the defendant Mayet as to Count 1?

A Guilty.

Q As to Defendant Aguilar, Count 1?

A Guilty.

Q As to Defendant Mayet, Count 2?

A Guilty.

Q As to Defendant Aguilar, Count 2?

A Guilty.

THE COURT: Will you poll the jury please.

(Jury polled.)

THE COURT: Members of the jury, before I discharge you with out thanks, I would like to say two things I nearly always mention to juries. First, I never make any comment on the verdict of a jury, never. Therefore, the fact that I make no comment tonight means absolutely nothing.

Second, while I have no reason to suppose that anybody will ever inquire as to what took place in the jury room and while this is a country of free speech and I don't make any order in the premises, I believe it is a sound principle that what takes place in the jury room when jurors are deliberating is a matter for the jurors themselves and should anybody ever inquire as to what took place in the jury room, I suggest that it is a wise decision in the light of theprinciples that I suggest not to reply. If you want to cite my suggestion you may feel free to do so. As I say, I have no reason to suppose that anybody will ever inquire, but I usually make this suggestion to juries.

You have been punctual. We haven't been able to start on time, but you have been punctual. You have been attentive and the chief judge and the other judges of the court and I thank you for your service here.

Mr. Clerk, I believe these jurors are excused.

Thank you so much, Madam Foreman, ladies and

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gentlemen of the jury, you may retire and be excused for the term.

(Jury excused.)

THE COURT: First I suppose we had better set a date for sentencing. Suppose we say Friday afternoon, February 1.

Mr. Stone, Mr. Willis, is that all right? You realize -- I am sure the lawyers realize, the defendants can't realize, we can't impose sentence at once. We like to get a presentence report from the probation offices which tells us something about the background, the past history of the defendants and information which will enable us to reach as fair and reasonable and just a sentence as is possible in this life, humanly possible.

It takes time for the probation office to prepare these reports. I think I ought to give them until the end of January which is Thursday, the 31st of January, and I usually try to do these matters and civil motions on Friday afternoon.

Mr. Willis, Mr. Stone, I take it that is agreeable?

MR. STONE: Two o'clock, your Honor?

THE COURT: 2:30. I think we will be in Room 705.

Mr. Buchwald, is that a convenient time for you?

MR. BUCHWALD: Yes, your Honor. I myself will be on a honeymoon at that time but I will have someone cover.

THE COURT: I congratulate you, but you can have

somebody cover for you.

What is the bail status of the defendants? I didn't fix bail.

MR. WILLIS: Maria Aguilar is out on $5,000 personal recognizance bond, your Honor.

THE COURT: Mr. Buchwald, is there any reason why we shouldn't continue that?

MR. BUCHWALD: Your Honor, I must confess to not having a record of what the bail status is with respect to Miss Aguilar. We would not object to continuing that bail status.

THE COURT: Miss Aguilar will be continued on the same bail until the day of sentence.

MR. WILLIS: Thank you, your Honor.

THE COURT: Mr. Mayet, as I heard, I think has a personal recognizance bond secured by his parents' signatures and the pledge of their house.

MR. STONE: That is correct, your Honor. That came out in the statement offered in evidence. His father also testified to that. That is their own residence. I think that is the greatest moral security you can have for a bond.

THE COURT: I am inclined to think the presence of Mr. Mayet's child, his parents, the parents' obligation, business, presumably he can't go back to Cuba. My inclination --

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and he has been here all the time. In fact, he has been very punctual. My inclination would be to continue his bail as heretofore.

Mr. Buchwald?

MR. STONE: Can I point out his parents have been here -- not his father all the time, but his parents have been here, his mother all the time and his sister.

THE COURT: Yes.

MR. BUCHWALD: With respect to Mr. Mayet's bail status, while it is clear that he has appeared in court up to this point, I would wish to note to your Honor that the jury's verdict in the case in addition to being a verdict of guilty on the offenses charged is tantamount to a finding that Mr. Mayet did not tell the truth in his testimony to the Court. In view of the fact --

THE COURT: I know, but that philosophically or from the standpoint of jurisprudence we could talk about that for hours and hours and hours. I have always been rather reluctant to be hard on a defendant in a criminal case because he told a story that hasn't been believed. I am not that expert about criminal jurisprudence, frankly. My only problem now is, regardless of whether he is a good man or a bad man, I say nothing about that. I am only interested in his being here at the day of sentence and my initial impression is that

in the first place he must know that he is in a lot worse trouble if he jumps bail and flees than he is now.

In the second place, in view of his history and background, while I admit that no one can be certain, it just doesn't seem to me that he is a likely prospect to flee.

MR. STONE: There is one other reason why I would urge the Court to consider that he would not flee. I have discussed the possibilities of a conviction with Mr. Mayet.

THE COURT: Of course, you are a realist.

MR. STONE: He will be 26 years old in May. The alternatives in sentencing that you have are greater at this time than they will be if he ever flees and if he flees he gives up that alternative.

THE COURT: No question about it.

MR. STONE: If he follows my advice and realizes those alternatives are available he would show up on time. If he doesn't show up at this sentence, May will be very shortly following and he will miss that possibility. I know that there is no guarantee what sentence you will give, but you have a greater leeway up to the age of 26.

THE COURT: There is no question about it. You have told him about the Federal Youth Corrections Act, I'm sure, and that runs out when he is 26.

Do you have anything else to say about Mr. Mayet's

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bail, Mr. Buchwald?

I will continue his bail as heretofore.

Tell me something before we part procedurally. What is the proper practice as to the so-called information that came to my attention lodged against Miss Aguilar in respect of some prior conviction?

MR. WILLIS: Your Honor, Miss Aguilar has been in contact with our probation department. That is out of the United States District Court for New Jersey, Newark, New Jersey, your Honor. She was treated as a youthful offender.

THE COURT: How old is she now?

MR. WILLIS: 20 years old.

THE COURT: 20 now?

MR. WILLIS: Correct. They called her. It is not necessarily so that she will be in violation of that until the time of sentencing, depending upon what she is sentenced to and what occurs, it could happen, theoretically, your Honor, it could happen that you may put her on probation, everything being considered.

THE COURT: If she is a second offender there are no minimums for second offenders.

MR. WILLIS: She fell under the Youthful Offenders Act, your Honor. I am not an expert on that act and I don't want to make any representations that I am not sure of. I have

dealt with it before and I don't think -- Mr. Buchwald will correct me if I am wrong. He seems to have information in front of him. I don't think it is mandatory that under the age -- she was 18 years old on this first sentencing and I don't think at age 18 it is mandatory that she be sentenced, that she has to be under the law. If I am wrong --

Am I wrong, Mr. Buchwald?

MR. BUCHWALD: It is my understanding, your Honor, that notwithstanding the fact on the first offense she was treated as a youthful offender, nonetheless that would qualify as one offense and, therefore, make the second offender statute applicable. It is my understanding that that statute, in effect, doubles the maximum possible penalties which you may impose.

I am not presently aware of a minimum that is required. I am speaking now, as I understand, if there is a term of confinement imposed, I believe it becomes an eight-year minimum special parole rather than the three-year minimum special parole which would normally exist.

THE COURT: Obviously we will have to look into this. But when, procedurally, do we deal with the question of whether this information states the facts or not? I assume it does.

MR. WILLIS: I have read it and we represented it

and it is accurate as far as I am concerned, your Honor.

THE COURT: Mr. Buchwald, what is the procedure? What do I do with this? Do I on the day of sentence ask Miss Aguilar if she admits this?

MR. BUCHWALD: It is my understanding that prior to sentence, and I believe that can be on the day of sentence before sentence, that Miss Aguilar must formally enter an admission or denial as to the information. If there is a denial as to the allegations in the information, then I believe it would be appropriate for your Honor to conduct a hearing at which the U.S. Attorney has an opportunity --

THE COURT: Let's do that right now.

Mr. Clerk, show this original information to Miss Aguilar and her counsel and we will take her statement right now.

MR. WILLIS: We went over this, your Honor, and I represented to the Court as Miss Aguilar's attorney that this is an accurate disposition of a case involving Maria Aguilar.

THE COURT: Miss Aguilar, have you seen this statement that you were convicted in New Jersey for distributing or possessing with intent to distribute a controlled substance, to wit, a certain quantity of cocaine?

THE WITNESS: Yes, sir.

THE COURT: Do you admit or deny?

THE WITNESS: I admit it.

THE COURT: All right. That disposes of that as a formal matter. Of course we will go into what the effect of it is. Frankly, a young woman as young as this, I would certainly hate to find that I had to impose some minimum term of imprisonment of any substantial length.

MR. WILLIS: I don't think that the statute, as I remember it, only deals with the maximum, your Honor.

THE COURT: Obviously we will see. If there are any motions to be made I will permit them to be made returnable on the day of sentence.

Anything else?

Mr. Willis and Mr. Stone, would you ask your clients respectively, it is too late now to speak to probation, but to speak to the probation office just as soon as possible. The best thing is tomorrow.

MR. WILLIS: Your Honor, just so the Court knows, Miss Aguilar must contact her probation department today or tomorrow morning and she will come expeditiously.

THE COURT: I won't require it tomorrow morning but just as quickly as possible.

MR. WILLIS: I would like to thank your Honor for permitting me to come over to New York and try a case before your Honor. It has been a pleasure.

THE COURT: I hope you will be able to come back again, Mr. Willis. It will be a pleasure to have you.

MR. STONE: Other than the verdict, it was a pleasant trial.

THE COURT: These are things as they say, "Es la vida."

(Concluded.)

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United States
v.
Candido Mayet

New York, February 1, 1974
2:35 P.M.

BEFORE:

HON. INZER B. WYATT,
District Judge.

(Case called.)

MR. STONE: The defendant is present, your Honor. Defense counsel is present.

THE COURT: All right.

Is the government here?

MR. NESLAND: Yes, your Honor. I am standing in for Mr. Buchwald today.

THE COURT: Does the government have anything to say?

MR. NESLAND: With respect to which defendant, your HOnor?

THE COURT: Yes, Mr. Stone?

MR. STONE: Before your Honor commences sentencing, Mr. Willis is not present. His partner is here and has an application to the court; before you proceed, I'd appreciate it if you would take his application.

THE COURT: Mr. Willis is not representing Mr. Mayet, is he?

MR. STONE: No, but it depends --

THE COURT: Let's take Mr. Mayet first.

MR. STONE: The reason for that, your Honor, is that he will ask for an adjournment based on the fact that Mr. Willis is not present. If the Court grants an adjournment for the defendant Aguilar, I would ask also for an adjournment if for no other reason than to keep a uniform briefing schedule of the situation if, and when this case goes to the Court of Appeals, and if and when you grant an adjournment on behalf of the co defendant.

Our briefing schedule would, of course, be effective from the day we file a notice of appeal. I don't think that if this case goes to the Court of Appeals, it should go in two separate cases.

THE COURT: No, I agree.

MR. STONE: I would ask that you hear his application first.

THE COURT: I doubt if there is any good cause for doing it, but what difference does it make. I will hear him if you want me to.

MR. BOFFA: My name is Eugene Boffa. Mr. Willis was Mr. Aguilar's attorney during the trial and before the trial. Mr. Willis is ill. I have spoken to the defendant yesterday and in connection with the sentencing, she expressed the

strong desire to me that she didn't want me to handle the sentencing; she wants Mr. Willis to handle the sentencing.

THE COURT: Mr. Willis has been sick for some time I understand.

MR. BOFFA: He has been confined for the past three weeks. I did explain to her that I would go over the file and represent her. But again, she stated her position that she has always dealt with Mr. Willis, she has known Mr. Willis, he handled the trial, he knows her from other matters, possibly, and he's had a good deal of experience with her; and she feels he can better represent her at this time.

I am expressing to you her sentiments that she doesn't want me to handle this part of the sentence, and she wants Mr. Willis. I do hope, though, that Mr. Willis will be back on his feet in another week.

The doctor originally said a month. He's been out sofar three weeks, your Honor. The defendant is in Court.

THE COURT: I'm sorry Mr. Willis is ill, and of course I would normally like to grant any application, but I don't believe that I can do it in this case. Mr. Willis has been ill apparently for some time. There was ample time to secure another attorney , if Miss Aguilar wanted to do so.

And you are Mr. Willis' partner. I take it you had the chance to read the presentence report.

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MR. BOFFA: Yes, sir, I have.

THE COURT: I believe that if she wants to be represented this afternoon, I believe that you could adequately do it. On the other hand, if she doesn't want any lawyer at all why, of course, that is perfectly all right with me; but I am prepared to sentence today and I deny the application for an adjournment.

I think she'd be foolish not to take advantage of your presence and have you act for her, since you are here. But that is her choice. If she doesn't want any lawyer at all --

MR. BOFFA: Your HOnor, I think it would be properly said that it's not me that she may object to, but she prefers to have Mr. Willis.

THE COURT: I'm sorry; Mr. Willis isn't available. But I can't grant your application.

All right. We will go ahead with Mr. Mayet.

MR. NESLAND: The government has nothing to add to thepresentence report with respect to Mr. Mayet.

THE COUPT: Mr. Stone, have you had a chance under the recent dispensations, I meant to give you a chance --

MR. STONE: Yes, your chambers called me, your Honor, and made arrangements with the Probation Office and I availed myself of that opportunity and did read the

Probation report.

THE COURT: Except for the recommendation as to sentence.

MR. STONE: That is correct.

THE COURT: Then I will hear youwith respect to Mr. Mayet.

MR. STONE: YOur Honor, you presided at the trial so certainly the facts and circumstances should not be reviewed at this time, nor should the issue of innocence and guilt be reviewed. You have many options here at this time.

One option which you have and I would ask you to carefully consider is the fact that this defendant is now 25 years of age and will be 26 I believe in May of this year, or in April of this year. That gives him an opportunity, regardless of what sentence you give him, of expunging at some future time whatever record he has as a result of this particular case.

The probation report goes into detail of his background, which includes his attendance at college, it goes into detail of hiw work record, which I think is fairly good; it goes into detail with his family background, the fact that he lives now with his parents.

It also goes into detail to his personality, which it indicates , or they indicate that he is dependant on

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other people. I think many human beings are dependant on other people, some for circumstances that are good and some for circumstances that are not so good.

But he stands before this court convicted for the first time in his life. He is a young man; he has worked hard. I think that he is a capable human being in an industrious manner outside anything that resembles criminal activity.

I think the record indicates he's done fairly well in some of his jobs and good reports I believe from two or three of his employers. I believe also that the report indicated that tax returns were not available when it was written, but the probation officer informed me that since that report was written these returns have been forthcoming and he stated to me that he thought you had these returns and certainly could look at them to see that there is an amount of taxpaying by one or more of the defendant's family.

I think his family background is such that he should not be a person in this position. Nevertheless, he is in this position; he is facing a sentence.

I would ask that you give him the benefit of the Young Adult Offenders Act as extended and give him a sentence which would be fair to the interests of this Court, to the interests of society and one that would be fair to the

defendant himself as a person who could and should be rehabilitated completely if he remains gainfully employed.

THE COURT: Mr. Mayet, is there anything you would like to say in your own behalf or any information you'd like to give me in connection with punishment?

THE DEFENDANT: No, sir.

THE COURT: I think Mr. Stone has ably summarized the situation and I am trying to be lenient and I am going to adopt at least one of Mr. Stone's suggestions.

I am going to sentence under the Federal Youth Corrections Act as extended in order to give Mr. Mayet an opportunity. But the nature of the offense requires a prison sentence. Especially since Mr. Mayet was one of the chief figures, he and Miss Aguilar. But since this is his first offense I am going to adopt Mr. Stone's suggestion and use the Federal Youth Corrections Act as extended.

The Court finds that the defendant was 25 years old at the date of conviciton and is suitable for handling under the Federal Youth Corrections Act 10 United States Code Section 5005 and following; as extended to include young adult offenders by 18 United States Code 4209.

The defendant is hereby committed to the custody of the Attorney General or his authorized representative for treatment and supervision under 18 United States Code

Section 5010 (b) until discharged by the Federal Youth Correction Division of the Board of Parole, as provided in 18 United States Code Section 5017 (c).

Now, Mr. Mayet, as I say, I have adopted Mr. Stone's suggestion to sentence under the Youth Corrections Act. I am doing this to give you an advantage, and I want to tell you two of the advantages. First, you can be released in the discretion of the Youth Correction Division of the Board of Parole. In other words,it's up to you.

My impression is that you must be released within four years. But I believe it is fair to say that the Youth Correction Division wants to release people when the feel that people can be properly released to join the community, and I want to make that possible. That is why I have accepted Mr. Stone's suggestion.

Secondly, an advantage to you is that if you work out, as I hope you will, because you are still a young man, you can get the conviction set aside and therefore it will be as if you had a perfectly clean record thereafter. Under counts one and two the sentence is as indicated.

The defendant is committed for treatment and supervision under the two counts. The sentences to run concurrently.

MR. STONE: Your Honor, I have one additional

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application.

THE COURT: Wait, Mr. Stone. I will hear you in just a little bit.

Mr. Mayet, you have a right to appeal and if you are unable to pay the cost of an appeal, you have a right to apply for leave to appeal without prepayment of fees and expenses; that is, to appeal in forma pauperis. And if you so request, the Clerk of the Court will prepare and file forthwith a notice of appeal on your behalf.

Now, Mr. Stone.

MR. STONE: Your Honor, I wonder if you would consider a disability under the Immigration and Naturalization Law, Section 232, which would prohibit the Immigration from using this conviction as deportation.

THE COURT: I'm not sure I understand that, Mr. Stone. Tell me about it.

MR. STONE: As I read the law, and I think Immigration has interpreted, that this man is a Cuban refugee. At the present time he is here under that program. His family is here, his mother and father are established, and his sister is a college student.

This conviction involves moral terpitude, whether it be a youthful conviction or not, and therefore they could deport under this conviction if the -- depending on whether

or not the Judge at the time of the conviction considers this a disability. And you can at that time grant him the relief.

THE COURT: Do you have that statute here?

MR. STONE: It's 232 of the Immigration and Naturalization Act.

THE COUPT: It has to be done now or never?

MR. STONE: No, I think it has to be done within 30 days of sentencing, but I think it has to be done on the record. Or, I suppose it could be done by Court order.

THE COURT: I haven't addressed myself to that problem. I think I will just have to deny it without prejudice to an application within the time, because I don't have the statute. I don't know what I am supposed to do about it.

MR. STONE: The Chief Judge of the Supreme Court told the lawyers to innovate different procedures.

The other matter, your Honor, is a matter of bail pending appeal.

THE COURT: I think Mr. Mayet ought to be remanded unless, considering the fact that he is a young man and that this is his first offense, my understanding is he is now on $25,000 personal recognizance bond.

MR. STONE: That's correct. Which is secured by his father's and mother's signatures, and their residence in New Jersey. They own the house. So it's not his personal

recognizance bond, it's one signed by his father and mother and it consisted ot pledging their family residence, which is the strongest possible security any family can put up for their son.

THE COURT: Have they already signed his bond?

MR. STONE: As I understand it, and his father is here, that bond was signed at the time of the arraignment.

THE COURT: Does the goernment know anything about it?

MR. NESLAND: That bond was supposed to have been signed before the Magistrate, but I have no personal knowledge as to whether it was signed.

MR. STONE: His father is here, your Honor. I would ask, though, that if that is not the case, that you set an appeal bond in the same amount indicating that his mother and father must sign and that the deed to the house be pledged as part of that bond.

MR. NESLAND: It's the government's position, your Honor, that the defendant be remanded.

THE COURT: No, I won't remand him. But I will remand him except that if the father and mother sign a personal recognizance bond of $25,000 secured by the deed of the house, that will be his bail.

MR. STONE: Could they have until Monday afternoon to post that? I don't think the man is going to flee. It's

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up to the Court. As I say, they are here in Court now and that bond is now at the Magistrate's office and would require I assume the paper work in getting these files to the Clerk's office and the bond released; and I don't think it could possible be done this afternoon.

They'd also have to have a notice of appeal with everyting written in there.

THE COURT: All right. I will give you until the close of business on Monday to make the bond. But the bond has to be a $25,000 bond executed by the father and mother of Mayet, in addition to Mr. Mayet himself and secured by a deed of the father's and mother's house. And them he may be on bail pending appeal.

MR. STONE: Thank you.

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I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Joseph Quinoney
Official Court Reporter
U. S. District Court

Eugene L. Lewis